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**CHARLES UNIVERSITY IN PRAGUE**

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## **MASTER'S THESIS**

# **Human Rights Issues of Minority Communities in Post-War Kosovo: *Successes and Failures of the International Administration and the Provisional Authorities***

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Supervisor: **PhDr. Kateřina Werkman**

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## **Topic overview**

In the series of brutal conflicts that swept through the Balkans in the 1990s, the Kosovo War was the last episode in the drama of violent dissolution of the socialist Yugoslavia. It was a major international crisis of the time, producing substantial consequences both in the region as well as on the stage of world politics.

One year after the Dayton Peace Agreement was signed in 1995, ending the wars in Bosnia and Croatia, Albanians in Serbia's southern province Kosovo started a rebellion against the central state authority in Belgrade. It was a peak of decades long political and ethnic quarrels between Serbs and Albanians in the province, which escalated into a crisis after the death of Yugoslavia's absolute ruler Josip Broz Tito in 1980 and after Slobodan Milošević, a then rising star of Serbia's Communist party, in 1987 limited and downplayed the broad Kosovo autonomy. An upheaval that started as occasional hit-and-run attacks on the Serbian security forces carried out by armed Albanian groups in the late 1996 and early 1997, turned out into an all-out war in 1998 between the Serbian military and police, on one side, and the Kosovo Liberation Army, Kosovo Albanian's guerilla forces, on the other. A large-scale destruction, killings and expulsions committed by both sides in the conflict, but mainly prescribed to the Serbian forces, prompted an international military intervention in the spring of 1999. After the United States failed to broker a peace deal between Serbia and Kosovo Albanians, NATO staged the 78-day long, an UN Security Council-unauthorized campaign of aerial bombing of Serbia. The goal was to force the Serbian military and police out of Kosovo and to halt the mass violations of human rights. After the Serbian forces withdrew from Kosovo in June 1999, the province was placed under the UN administration with KFOR, the NATO forces, being in charged for the security.

In the years to follow, Kosovo was governed by the international community, which was also developing local institutional capacities, preparing the province for the period after the final agreement on the status. Following the widespread anti-Serbian riots in March 2004, the process of final status decision was speed up. In a one year-long

negotiations between Belgrade and Kosovo Albanians a solution had not been reached and with the support of major Western powers Kosovo unilaterally declared independence in February 2008. So far, 75 out of 192 UN-member states recognized Kosovo. New round of talks between Belgrade and Priština sponsored by the EU began this spring, in order to breach the current stalemate in the two's relations.

### **Thesis Objectives**

The major goal of the proposed topic is to examine key developments in the area of human rights in Kosovo, after the military intervention of NATO in 1999. The research will focus on non-Albanian ethnicities (Serbs and Romas, mainly) as now minority communities inside overwhelmingly Albanian-populated and controlled Kosovo. The thesis will attempt to answer questions:

- What is the quality of security for minority communities in Kosovo?
- Do they enjoy unrestricted freedom of movement on the whole territory of Kosovo and to what extent?
- What is the current situation with displaced members of minority communities and what are the major trends in the process of return?
- Are property rights of members of minority communities respected enough?
- What are the crucial elements of minority communities' cultural rights in Kosovo and how are they implemented in practice?
- What is the general economic and social status of minority communities and what are its major determinants?

Simultaneously, the thesis will look into the role of the international community in the post-war Kosovo and its institutions and organizations present on the ground (UNMIK, OSCE, KFOR, EULEX, etc.) and try to identify and critically assess their influence on the developments of the issues. It will attempt to point out both potential successes and failures, drawing out causes and reasons for them.

Acknowledging the fact that the theoretical body of human rights is large and fluid, this thesis will focus on those aspects of human rights framed by the theoretical framework, which is based on three major groups of sources:

- Globally accepted charters, declarations and conventions on human rights, adopted mainly by the UN bodies;
- Documents on human rights by European institutions, such as the Council of Europe and OSCE, and;
- Documents and strategies formulated by institutions in Kosovo, both international and domestic, in those aspects where they are referring to human rights.

Therefore, the theoretical framework will be a synthesis of stipulations on human rights from sources mentioned above and shaped to address particular human rights issues arising from specifics of the Kosovo case.

In the sense of time, the topic spans from June of 1999, when Serbian forces left Kosovo and the province's provisional authority and the UN administration were set in charge, to the present days.

## **Methodology**

This master thesis is a *case study* by its nature. Conclusions and findings will be based on a wide array of sources ranging from books, scholarly essays/papers, and official documents to journalistic articles/reports, interviews, surveys and statistics. Audiovisual materials such as politicians' statements and documentary movies will also be used. Naturally, not all the sources will have the same significance for the production of the thesis. *Criteria* on which selection will be made are relevance to the topic, up-to-date character, amount of empirical data, and credibility of the source. An applied *approach* in the thesis will be combined theoretical and empirical-analytical. Initially, a theoretical framework structure will be established on the ground of applicable theories, which will be subsequently filled and shaped by empirical data and concrete findings suitable for the particular case. To that respect, the thesis should be more of an author-oriented than a theory-oriented character.

## **Subject Significance**

When the Kosovo crisis was peaking in 1998 and 1999, it was a subject of great political, media and academic attention. Hundreds of books, papers and articles on human rights violations and NATO intervention in Kosovo were written. Somehow, when international peace forces entered the province and the UN took over the administration, the interest for Kosovo suddenly plunged. Human rights in Kosovo since then are only in focus of human rights watchdogs, such as Human Rights Watch or Amnesty International, and local media outfits.

The author hopes that this thesis will show that human rights violations are still present in Kosovo and that the issue was not resolved with the NATO military intervention and subsequent establishment of the international administration. In that respect, this thesis is an attempt to narrow down the information gap about Kosovo that has been widening throughout the past decade.

## **Provisional Structure**

1. Introduction
  - 1.1. Methodology
  - 1.2. Overview of literature
2. Theoretical framework
  - 2.1. Definition and content of human rights
  - 2.2. Definition and content of minority rights
  - 2.3. Human rights and minority rights in documents related to Kosovo
  - 2.4. Definition of “minority communities”
  - 2.5. Approaches in defining Kosovo’s status and institutions
  - 2.6. Structure of International Administration and Provisional Authorities
3. Brief history of the Kosovo crisis
4. Security and freedom of movement
5. Displaced, return and property rights
6. Cultural rights



7. Social and economic status of minority communities
8. Conclusion
9. Appendices
10. Bibliography

## **Potential Sources**

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*Kosovo: Poised by Lead; A Health and Humanitarian Crisis in Mitrovica's Roma Camps.* Human Rights Watch. New York. June 2009.

*Not Welcome Anywhere: Stop the Forced Return of Roma to Kosovo.* Amnesty International. London. 2010.

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*World Report 2010.* Human Rights Watch. New York. 2010.

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Dvořák, Vaclav. *Uloupene Kosovo.* Česka Televize. 2008.

## **DECLARATION**

I hereby declare that this thesis is my own work, based on the sources and literature listed in the appended bibliography. The thesis as submitted is 197,116 keystrokes long (including spaces), i.e. 121 manuscript pages.

Srđan Karalić

In Prague, May 20, 2011

Signature

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## **ACKNOWLEDGEMENTS**

Here I would like to express my thanks to my Thesis Supervisor, PhDr. Kateřina Werkman for expert assistance with the elaboration of the submitted work.

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## **List of Abbreviations and Acronyms**

|        |  |
|--------|--|
| CIA    | Central Intelligence Agency                                      |
| CSCE   | Conference for Security and Co-operation in Europe               |
| EU     | European Union   |
| Eulex  | European Union Rule of Law Mission in Kosovo                     |
| ERRC   | European Roma Rights Center                                      |
| GDP    | Gross Domestic Product   |
| HBT    | Humanitarian Bus Transportation                                  |
| HPD    | Housing and Property Directorate                                 |
| HRW    | Human Rights Watch   |
| IDP    | Internally Displaced Persons                                     |
| Kfor   | Kosovo Forces  |
| KLA    | Kosovo Liberation Army   |
| KPA    | Kosovo Property Agency   |
| KPS    | Kosovo Police Service  |
| MEP    | Member of the European Parliament                                |
| NATO   | North Atlantic Treaty Organization                               |
| OSCE   | Organization for Security and Co-operation in Europe             |
| PISG   | Provisional Institutions of Self-Government                      |
| RAE    | Roma, Ashkali, Egyptians   |
| UN     | United Nations   |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNHCR  | Office of the United Nations High Commissioner for Refugees      |
| UNMIK  | United Nations Interim Administration Mission in Kosovo          |
| US     | United States  |
| WW2    | World War Two  |



## **Abstract**

The given thesis examines the issues of human rights of minority communities in Kosovo under the UN-led international administration. The human rights of minority communities, Serbs and Roma foremost, are assessed through four wide areas of issues distinctive for Kosovo: security and freedom of movement; displaced, return and property rights; cultural rights; and economic and social rights. The thesis presents and highlights the most pressing issues for minority communities in these four areas, aiming to construct a comprehensive analysis of their status in Kosovo for the past 12 years.

The thesis also scrutinizes policies, strategies and actions of the international administration and, subsequently, the provisional authorities in respect to minority human rights. Special emphasis is placed on the discrepancies between the proclaimed and the achieved, as the best measure of the international community's level of success in Kosovo.

The thesis concludes that Kosovo is the part of Europe where minority human rights are least respected and where the oppression of members of minority communities by majority Albanian population is widespread and systematic. Furthermore, the international administration and the provisional authorities were both unable and unwilling to prevent and punish major violations of minority human rights and that only modest success has been achieved, visible only in the past few years.

## **Anotace**

Předkládaná diplomová práce zkoumá problematiku lidských práv z pohledu minoritních komunit v Kosovu během mezinárodní administrativy vedené OSN. Lidská práva minoritních komunit, Srbů a především Romů, jsou zhodnocena prostřednictvím čtyř rozsáhlých oblastí problémů: bezpečnost a svoboda pohybu; vlastnická práva; kulturní práva; a ekonomická a sociální práva. Práce uvádí a zdůrazňuje nejtěžší problémy minoritních komunit v těchto čtyřech oblastech, přičemž aspiruje na komplexní analýzu jejich statutu v Kosovu za posledních 12 let.

Diplomová práce také zkoumá politiky, strategie a akce učiněné mezinárodní administrativou, přičemž nejsou následně opomenuty ani prozatímní autority ve vztahu k lidských právům minorit. Zvláštní důraz je kladen na neshodu mezi proklamovanými a dosaženými cíly, což nám slouží jako nejlepší nástroj pro měření stupně úspěchu mezinárodní komunity v Kosovu.

Diplomová práce tak dochází k závěru, že Kosovo je součástí Evropy, kde minoritní lidská práva jsou málo respektována a kde utlačování členů minoritních komunit většinovou albánskou populací je velmi rozšířené a systematické. Kromě toho jsou mezinárodní administrativa a prozatímní autority neschopné a neochotné předcházet a trestat závažné porušování lidských práv minorit. V této problematice byl zatím dosažen jen malý úspěch, viditelný pouze v několika posledních letech.

## INTRODUCTION

The collapse of Communism and fall of the Iron Curtain at the end of the 1980s brought almost half a century-long awaited freedom for many nations across the until-then divided Europe. Democracy was introduced in the countries of Eastern Europe, followed by strong optimism of an emerging free and unified continent. However, these changes also prompted a number of armed conflicts in the region, as in some cases the drives by various ethnic, religious, and linguistic groups to reinvent their identities and redefine borders of their territories irreconcilably collided.

This scenario occurred in Yugoslavia, a once prosperous and relatively free multiethnic socialist country in southeastern Europe, which disappeared in a series of brutal wars throughout the 1990s. The conflicts attracted huge international attention, as the continent was witnessing horrors unseen on its soil since World War 2. Mass destruction, displacements, refugees, ethnic cleansing, concentration camps, mass rapes, war crimes, monstrous atrocities against civilians; they all became synonyms for what peoples of the former Yugoslavia were claiming to be a justified struggle for self-determination and independence. The widespread and large-scale violations of human rights impelled the international community, the US and the EU foremost, to actively engage in the wars on the grounds of protection of human rights.

Echoing the international intervention in the midst and aftermath of the Bosnia War, this argument was also used in the last episode of the Yugoslavia drama – the war in Kosovo. By the end of 1998, the southern Serbian province of Kosovo was ravaged by the escalating arm strive between Serbian security forces and ethnic-Albanian guerilla, Kosovo Liberation Army (KLA). The efforts of the international community to prevent new atrocities and an upcoming humanitarian disaster already seen in the region few years earlier, resulted in the UN Security Council-authorized NATO aerial campaign against Serbia. During “the humanitarian bombing”<sup>1</sup>, the crisis escalated, generating approximately one million refugees, mainly Albanians, causing mass destruction and civilian deaths by

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<sup>1</sup> A phrase allegedly coined by the former Czech president Vaclav Havel.

Serbian forces and KLA, on the ground, and by NATO, from the air. NATO's victory in the conflict and Serbia's withdrawal from the province were qualified by the Alliance as an accomplishment of the proclaimed humanitarian goals and a reverse of ethnic cleansing of Albanians, masterminded by the embattled Serbian leader Slobodan Milošević. As a result, the international administration under the lead of UN was established to rule Kosovo until the final agreement on its status is reached.

With the 9/11 terrorist attacks and wars in Afghanistan and Iraq that followed, the world's political and military attention was diverted away from the Balkans and Kosovo. However, the lack of attention did not mean that problems in this part of the globe were suddenly resolved. On the contrary, since the arrival of the international administration, Kosovo turned out to be the most dangerous place in Europe for ethnic minorities, where the violations of basic human rights assumed the organized form on everyday basis.

Being free of Serbian rule, the previously oppressed Albanian majority turned on to retribution against Kosovo Serbs and other minorities, mainly Roma, who they perceived as Serbian collaborators. In 12 years of international governance in Kosovo, ethnic minorities have been exposed to arbitrary killings, kidnappings, expulsions, ethnic cleansing, physical and verbal attacks, destruction, looting, unlawful seizure of property and cultural heritage, deprivation of and segregation in public services, and extremely limited freedom of movement. These profound and systematic human rights violations have been embodied in some monstrous and bizarre phenomenon such as the organized harvesting and trafficking of kidnapped Serbs' organs, WW2-like minority ghettos surrounded with barbed wire, compulsory military escorts for minorities, and round-the-clock military surveillance of Serbian religious and cultural sites.

Paradoxically, all this is happening under the heavy international civilian and military presence on the ground, whose primary mission is to protect minority human rights, enforce security for everybody and enable the return of all displaced persons. UNMIK, OSCE, Eulex, Kfor and other international governmental and non-governmental organizations, all part of the international administration in Kosovo, spend hundreds of millions of euros on programs and strategies trying to achieve these objectives. From the situation described above, one finds hard to derive an opinion that could brand their

mission as prevailingly successful. The establishment of provisional authorities, which were intended to empower the people of Kosovo, has not improved the overall situation significantly. Dominated by Albanians, sometimes even by those who are involved in crimes against minorities, showed to be deeply flawed and biased toward non-Albanians. They are neither able nor willing to protect basic human rights of minorities or to punish those who jeopardize them. Impunity became a connecting word for crimes, from petty robberies to killings, in which victims are non-Albanians.

In February 2008, Kosovo Albanians unilaterally declared independence from Serbia, backed by major Western powers. The newly created situation additionally strained barely existing relations between Priština and Belgrade, which rejects the independence, as well as between Albanians and Serbs in Kosovo. Non-Albanians, especially Serbs and Roma, feel angst about their future in the self-proclaimed country, as Kosovo remains a deeply divided society in the permanent state of frozen conflict.

### *Subject significance*

When the Kosovo crisis was peaking in 1998 and 1999, it was a subject of great political, media and academic attention. Hundreds of books, papers and articles on human rights violations and the NATO intervention in Kosovo were written. Somehow, when international peace forces entered the province and the UN took over administration, the interest for Kosovo suddenly plunged. Ever since, human rights in Kosovo have only been the focus of human rights watchdogs, such as Human Rights Watch or Amnesty International, other international organizations present on the ground and local media outfits.

The thesis hopes to show that human rights violations are still present in Kosovo and that the issue was not resolved with the NATO military intervention and subsequent establishment of the international administration. In that respect, this thesis is an attempt to fill the information gap about Kosovo that has been widening throughout the past decade.

## *Methodology*

This Master's thesis is a *case study* by its nature. It aims to examine key developments in the area of human rights in Kosovo, after the military intervention of NATO in 1999. Acknowledging the fact that the theoretical corpus of human rights is large and fluid, the thesis will address those aspects of human rights as defined by the theoretical framework. The research will focus on non-Albanian ethnicities (Serbs and Roma, chiefly) as the current minority communities inside overwhelmingly Albanian-populated Kosovo. Simultaneously, the thesis will look into the role of the international community in post-war Kosovo, its institutions and organizations present on the ground (UNMIK, OSCE, Kfor, Eulex) and try to identify and critically assess their influence on various developments. It will attempt to point out both potential successes and failures, drawing out the reasons for them.

To conduct this analysis, a variety of sources will be scrutinized. The most important component will consist of various reports on human rights in Kosovo, compiled and produced by the international administration and international organizations on the ground. Especially significant will be reports of human rights watchdogs, Human Rights Watch and Amnesty International, which contain the most comprehensive and substantial accounts on human rights in Kosovo. Reports of other international organizations, such as the International Crisis Group and the Minority Rights Group International, will be frequently referred to as well.

In the construction of the theoretical framework, the thesis will heavily rely on the most significant UN and European documents on human and minority rights, as well as on the documents directly related to Kosovo, such as the UN Security Council Resolution 1244 and the Constitutional Framework. For the definition of minority rights, particularly important will be *Ethnicity and Group Rights*, a collection of papers by prominent academics in the field, edited by Ian Shapiro and Will Kymlicka.

The thesis will also refer to journalistic pieces, such as newspaper articles and magazine reports, and audiovisual materials, such as documentaries and TV reports, to

quote statements and depict initial reactions of crucial individuals, mainly political leaders, which are of significance to particular situations and cases.

Important numerical data, i.e. economic, social and demographic indicators, will be gathered from the sources mentioned above, as well as from publications by, among others, the World Bank, the International Monetary Fund, and the CIA.

Naturally, not all the sources will have the same significance for the production of the thesis. *Criteria* on which the selection will be made is relevance to the topic, up-to-date character, amount of empirical data, and credibility of the source. An applied *approach* in the thesis will be the combined theoretical and empirical-analytical. Initially, a theoretical framework structure will be established on the ground of applicable theories, which will then be filled and shaped by empirical data and concrete findings. In that respect, the thesis should be more of an author-oriented than a theory-oriented character.

This thesis is not without limitations. The major one is the absence of field research by the author that deprives the thesis of a personal, first-hand insight into the examined issues. Another one is the lack of reference to Albanian-language sources due to the author's inability to speak or understand the language.

### *Overview of literature*

Since the assessment of minority human rights in Kosovo is the core content of the thesis, the most valuable and most frequently used literature for its production will be reports by the human rights and minority rights watchdogs. Being international, they tend to have significantly higher unbiased approach in gathering, processing and interpreting data concerning particular issues related to the topic than local governmental or non-governmental organizations. Unlike them, human rights organizations, such as Human Rights Watch or Amnesty International, also have large experience and resources that enables them to substantially research and report on all aspects of human rights, providing the most comprehensive insight possible.

In that respect, *Minority Rights in Kosovo under International Rule*<sup>2</sup> by Clive Baldwin from Minority Rights Group International might not be the most facts and figures-abundant account of human rights in Kosovo, but it is for sure highly concise and comprehensive. Baldwin, a practicing human rights lawyer and the member of the OSCE Mission in Kosovo from 2000 to 2002, in 30-plus pages of his analysis successfully identifies key problematic areas of human rights in Kosovo, evaluates the role, actions and results of the international administration, and draws out recommendations on how to improve the overall situation of minorities. He additionally enriches his study with a short historical background of Kosovo, defines and profiles its minority communities and outlines the structure and crucial characteristics of the international presence there. The author's distinctive quality is the ability to precisely underline particular concrete events that reflect and explain the overall grave situation of human rights of Kosovo's minorities.

*Failure to protect: Anti-Minority Violence in Kosovo, March 2004*<sup>3</sup> by Human Rights Watch, is without a doubt the most substantial study of the anti-minority riots in March 2004. Its core is a detailed, hour-to-hour description of Albanian mob rioting in 10 municipalities across Kosovo with precise data on victims and destroyed property. The report also analyzes events that led to the violence and public mood in the eve of the riots. Finally, the report summarizes the status the minorities in the aftermath of the riots.

As a follow-up to this report, HRW published another one two years later titled *Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004*.<sup>4</sup> It deals with results of the international administration and provisional authorities in prosecuting those who organized, staged and participated in the March 2004 riots. The report thoroughly examines the response of the UNMIK police and Kosovo Police Service (KPS) during and after the riots, and the subsequent reactions of both international and local judicial systems. The study contains valuable accounts on how impunity in Kosovo,

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<sup>2</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>3</sup> Human Rights Watch. "Failure to Protect: Anti-Minority Violence in Kosovo, March 2004". Volume 16, No.6(D). July 2004. Available at: <http://www.forumnvo.org.rs/docs/analize/Anti-minority%20violence%20in%20Kosovo.pdf>

<sup>4</sup> Human Rights Watch. "Not on the Agenda: Failures to Address Accountability in Kosovo Post-March 2004". Volume 18, No.4(D). May 2006. Available at: <http://www.hrw.org/en/reports/2006/05/29/not-agenda>



especially in cases where victims are members of minorities, is a direct consequence of flawed and complicated judiciary.

*Prisoners in our own homes*<sup>5</sup> by Amnesty International is also a report about the status of minorities based on the organization's field research. It focuses on issues such as freedom of movement, social and economic rights, and rights to return. Like the majority of other reports, this one also stresses the problem of impunity, which is one of the essential problems in areas of minorities' security and return. Nevertheless, what differentiates this study from those alike is that it deals with economic and social status of minority communities, which is either often neglected or not addressed in this particular form.

OSCE Mission in Kosovo has a task to report about the situation on human rights, specifically those of minorities. Therefore, it is not surprising that this organization is able to deliver most detailed reports on the topic. Besides annual reports that will be used in this thesis, a particular one extensively covers minority communities. *Kosovo Communities Profiles*<sup>6</sup> is a capital, 300-page long study that contains an in-depth analysis of characteristics, status and structure of all minority communities in Kosovo. Issues of employment and socio-economic situation, security and freedom of movement, return and reintegration, access to municipal services and public utilities are among those examined in respect to every community. Furthermore, the report provides detailed demographic statistics for every municipality in which a particular community is present.

*Kosovo 2010 Progress Report*<sup>7</sup> compiled by the European Commission is an annual report compiled by the European Commission. It is one of the rare comprehensive accounts on the economic system of Kosovo, which is a useful starting basis when social and economic rights of minorities are evaluated, especially because information is concise, clear-cut and enriched with essential statistic data. The report also scrutinizes issues of

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<sup>5</sup> Amnesty International, "Prisoners in our Own Homes: Amnesty International's concerns for the human rights in Kosovo/Kosova". April 2003. Available at:  
<http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>6</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. Available at:  
<http://www.osce.org/kosovo/75450>

<sup>7</sup> European Commission. "Kosovo 2010 Progress Report". 9 November 2010. Brussels. Available at:  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf)

justice, freedom and security, border management and asylum, and criminal activities such as money laundering, drug trafficking and terrorism.

Apart from reports and other literature used in the research about human rights of minorities in Kosovo, another group of sources, which does not directly relate to the topic but is required for the development of the theoretical framework, will be referred to. Since the form and content of human rights and minority rights are defined in binding or non-binding international documents, such as charters, conventions, conventions and declarations, those will be used the most. Nevertheless, two academic pieces were particularly important for the proper and accurate defining of key terms researched in this thesis.

*Ethnicity and Group Rights*,<sup>8</sup> edited by Ian Shapiro and Will Kymlicka, is a collection of contributions of 20 authors. The volume provides a wide spectrum of theoretical considerations and discussions about the meaning of ethnicity, group rights, toleration, group representation, and dynamics of exclusion and inclusion. Authors argue ideas such as human diversity, non-liberal constitutionalism, and self-determination. They also explore legal solutions and practical instruments for protection of rights of groups based on ethnicity, culture, religion and/or language. What makes these theoretical constructions perfectly applicable to Kosovo's case is that they are created in the light of surging ethno-national conflicts in the post-Cold War world during the 1990s and out of the need to protect ethnic minorities in newly established countries without democratic tradition. The issues of minorities arising from the conflict in Kosovo and its aftermath are certainly of such sort.

*Elements of a Theory of Human Rights*<sup>9</sup> by Amartya Sen, inspects human rights from the position of law, ethics, morality, and history. Sen is trying to frame the idea of human rights into one comprehensive theory and to identify elements comprising it. Her primary point of view is from the "public reasoning" of human rights, meaning that focus is on how ideas of human rights appear in reality and how they are exercised in practice.

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<sup>8</sup> Shapiro, Ian and Will Kymlicka. „Ethnicity and Group Rights“. *New York University Press*. New York and London. 1997.

<sup>9</sup> Sen, Amartya. "Elements of a Theory of Human Rights". *Publishing Inc*. Philosophy & Public Affairs 32, No.4. Blackwell 2004. Available at: <http://www.mit.edu/~shaslang/mprg/asenETHR.pdf>

# 1. THEORETICAL FRAMEWORK

This chapter contains an overview of theoretical considerations and legal definitions on which a rationale for the assessment of minority human rights in Kosovo will be based. It will first briefly explain the development of the human rights ideal and then move on to review the most relevant documents on human rights. The scope of these documents will range from the most general ones, such as the Universal Declaration of Human Rights, to those that exclusively and directly address human rights in Kosovo. Additionally, the theoretical framework will identify and define the term *minority communities*, explain how Kosovo's disputed status will be referred to in this thesis, and provide a structural insight of the international administration and the provisional authorities in Kosovo.

## 1.1. Definition and content of human rights

When talking about the theoretical aspect of human rights, one has to keep in mind that there is no single or general theory that shapes the phenomenon. It is more accurate to talk about the *doctrine* of human rights instead, which comprises elements of particular political, sociological, philosophical, and economic theories and concepts, as well as postulates enshrined within various international and national charters, resolutions, declarations, constitutions, laws and other documents. In that respect, human rights represent a cumulative and constantly growing multi-component doctrine of an interdisciplinary character. They can be defined as:

basic moral guarantees that people in all countries and cultures allegedly have simply because they are people. Calling these guarantees "rights" suggests that they attach to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are

available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.<sup>10</sup>

The very foundation of human rights rests upon moral universalism, which is trans-cultural and trans-historical.<sup>11</sup> These convictions are mainly prescribed to Aristotle and the Stoics. In his *Nicomachean Ethics*, Aristotle supports the argument of the existence of the natural moral order and differs between *natural justice* and *legal justice*, where the later one is “that which has the same validity everywhere and does not depend upon acceptance.”<sup>12</sup> In centuries to follow, Christian theologians were the major promoters of moral universalism, though in an altered version, which was more acceptable to the postulates of religion.<sup>13</sup>

Further theoretical and conceptual development of rights that resemble the contemporary idea of human rights occurred in the 17<sup>th</sup> and 18<sup>th</sup> century, when John Locke and Immanuel Kant incepted and shaped the doctrine of natural law. In his *Two Treatises of Government*, Locke insists on the argument that individuals possess natural rights, which are independent of the political recognition granted to them by the state. He argues that these rights, i.e. life, liberty and property, are given by God; they preexisted the constitution of any form of political community, and the duty of political authority in a sovereign state is to protect them. Locke’s contribution to the doctrine of human rights is that he set the precedent by establishing legitimate political authority upon rights foundation. Immanuel Kant’s ideas are prominent in contemporary philosophical justifications of human rights, foremost because of the ideals of equality and moral autonomy of rational human beings. These ideals echoed the general sentiment of the Enlightenment, the era these two lived in.<sup>14</sup>

Though the certain notions and elements of human rights, such as the right to life, liberty, and property, span throughout a period of over two thousand years, it had not been

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<sup>10</sup> Nickel, James. *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*, Berkeley; University of California Press, 1987. pp:561-562.

<sup>11</sup> Fagan, Andrew. “Human Rights”. *University of Essex*. 2003. Available at: <http://www.iep.utm.edu/hum-rts/>

<sup>12</sup> Aristotle. “*Nicomachean Ethics*”. WLC Books 2009. pp:189.

<sup>13</sup> Fagan, Andrew. “Human Rights”. *University of Essex*. 2003. Available at: <http://www.iep.utm.edu/hum-rts/>

<sup>14</sup> Ibid.

earlier than after WW2 that the doctrine of human rights was substantially developed and normatively shaped.

It started in 1948 when the General Assembly of the newly founded United Nations adopted the *Universal Declaration of Human Rights*. Still under profound influence of the recent atrocities committed in the Holocaust, the world decided it is time to officially proclaim certain rights that will be applicable to every single human being on the planet and binding for all countries, states and political authorities of any kind. “All human beings are born free and equal in dignity and rights”, states the first article of the Declaration.<sup>15</sup> “Everyone has the right to life, liberty and security of person”, stipulates the Article 3.<sup>16</sup> The Declaration, composed of 30 articles, goes beyond mere listing of millenniums-old ideals. It prohibits, among others, torture, slavery, arbitrary arrest, racial, sexual, ethnical, religious and political discrimination, and introduces rights of free movement, freedom of thought, freedom of expression, rights to education, work, social and health protection, and the right to form and have a family.<sup>17</sup> The significance of the Universal Declaration of Human Rights is that for the first time the issue of human rights became not only a matter of moral and ethics but also a matter of law.<sup>18</sup>

In 1950, the then-newly established Council of Europe drafted the *Convention of the Protection of Human Rights and Fundamental Freedoms*. The Convention reflects the nature of the Universal Declaration and reaches even further by setting and regulating the functions of the European Court of Human Rights, as the most prominent judicial institution in charged for the protection of human rights on the continent.<sup>19</sup>

Finally, in 1966 the General Assembly of the United Nation adopted the *International Covenant on Civil and Political Rights*. The Covenant heavily relies on the stipulations in the Universal Declaration, elaborating, expanding and legally strengthening

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<sup>15</sup> “Universal Declaration of Human Rights”, Article 1. Available at: <http://www.un.org/en/documents/udhr/index.shtml>

<sup>16</sup> Ibid, Article 3.

<sup>17</sup> Ibid, Article 1-28.

<sup>18</sup> Fagan, Andrew. “Human Rights”. *University of Essex*. 2003. Available at: <http://www.iep.utm.edu/hum-rts/>

<sup>19</sup> “Convention of the Protection of Human Rights and Fundamental Freedoms”, Article 19-51. Available at: <http://www.governo.it/Presidenza/USRI/confessioni/normativa%20europea/Convenzione%20europea%20diritti%20delluomo.pdf>

its meaning. For example, any advocacy of national, racial or religious hatred that was previously “prohibited” is transformed into “will be prohibited by law.”<sup>20</sup>

These documents - the Declaration, the Convention and the Covenant – are the three milestones on which the entire contemporary doctrine of human rights is based. Since their creation, they have been used as references or direct sources of national and international legislation for the protection of human rights.

### *1.2. Definition and content of minority rights*

Minority rights can be defined as group-differentiated rights that stem from group distinctness. They are rights that are “granted to the members of a certain group to enable them to continue preserving and giving expression to their distinct identity.”<sup>21</sup> Minority groups can be based on myriad of features, such as lifestyle groups (e.g., homosexuals), advocacy groups (e.g., environmentalists), or other identity groups (e.g., women, the disabled). Nevertheless, *ethnicity*, together with *culture*, *language* and and/or *religion*, is the key aspect on which minority rights focus. This is understandable in the sense that *ethnic groups* have displayed greater potential to cause political violence or even secession.<sup>22</sup>

The end of the Cold War and subsequent emergence of new states and ethnic conflicts in the former Soviet Union and Eastern Europe raised the issue of interethnic relations and especially the problem of protection of ethnic minorities on the new political map of the continent. Newly created countries, such as those in the former Yugoslavia or Soviet Union, suddenly faced a problem of newly created minorities within their territories. Without the appropriate legislative framework and instruments that would define relations between the central state and minority communities, adding the lack of democratic tradition

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<sup>20</sup> “International Covenant on Civil and Political Rights”, Article 20. Available at: <http://www2.ohchr.org/english/law/ccpr.htm>

<sup>21</sup> Saban, Ilan. “Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of Arab-Palestinian Minority in Israel”. *Journal of the International Law and Politics*. 2 Jun 2005. pp:888. Available at: [http://law.haifa.ac.il/faculty/lec\\_papers/saban/NYUmr.pdf](http://law.haifa.ac.il/faculty/lec_papers/saban/NYUmr.pdf)

<sup>22</sup> Shapiro, Ian and Will Kymlicka. „Ethnicity and Group Rights“. *New York University Press*. New York and London. 1997. pp:10.

as a consequence of decades-long Communist rule, these new states were prone to oppression of ethnic minorities which, in some cases, as a response, led to brutal armed conflicts.<sup>23</sup>

The situation prompted a need for a far more detailed legislation on the issue of minority rights protection, which could not avoid stepping in to the area of human rights in general. The earliest formal provisions partially dealing with the rights of minorities were created even before the political changes in Europe occurred, at the end of 1980s and in the early 1990s. The *Convention on the Elimination of All Forms of Racial Discrimination* from 1969 covers groups based on “national or ethnic origin,”<sup>24</sup> and the *Genocide Convention* from 1951 applies to national, racial, ethnic, and religious groups.<sup>25</sup>

However, the first document to address substantially the issue of ethnic minorities and their rights was the *Copenhagen Document* adopted by the OSCE in 1991. The representatives of 34 European countries agreed upon the Document that reaffirms their commitment to the respect of human rights enshrined in previous documents by the United Nations and the Council of Europe, but also devoted significant attention to the rights of minorities. “Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law”,<sup>26</sup> stipulates the Document. It also binds “participating States” to “adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.”<sup>27</sup> In particular, the Document grants rights:

to use freely their mother tongue in private as well as in public; to establish and maintain their own educational, cultural and religious institutions, organizations or

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<sup>23</sup> Shapiro, Ian and Will Kymlicka. „Ethnicity and Group Rights“. *New York University Press*. New York and London. 1997. pp:3.

<sup>24</sup> “Convention on the Elimination of All Forms of Racial Discrimination”, Article 1. Available at: <http://www2.ohchr.org/english/law/pdf/cerd.pdf>

<sup>25</sup> “Convention on the Prevention and Punishment of the Crime of Genocide”, Article 2. Available at: [http://www.oas.org/dil/1948\\_Convention\\_on\\_the\\_Prevention\\_and\\_Punishment\\_of\\_the\\_Crime\\_of\\_Genocide.pdf](http://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf)

<sup>26</sup> “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”, Article 31. Available at: <http://www.osce.org/odihr/elections/14304>

<sup>27</sup> Ibid, Article 32.

associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation; to profess and practice their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue; to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs; to disseminate, have access to and exchange information in their mother tongue; to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.<sup>28</sup>

*The Declaration on Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted in 1992 by the General Assembly of the UN, is often characterized as a watershed document in protection of minority rights. Referring to the Article 27 from the *International Covenant on Political and Social Rights* and to the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, the Declaration affirms that “states shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”<sup>29</sup> The same article obliges signatory states to “adopt appropriate legislative and other measures to achieve those ends.”<sup>30</sup> Among the listed rights in the Declaration, the foremost ones are those concerning the use of a minority’s language, and free practicing and profession of religion and culture. Rights to free movement, association, communication, and spread of information are also included.<sup>31</sup>

*The Framework Convention on the Protection of National Minorities* drafted by the Council of Europe in 1995 reaches further in defining minority rights and the means for their protection. It is the first international documents that explicitly links minority rights

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<sup>28</sup> “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”, Article 32. Available at: <http://www.osce.org/odihr/elections/14304>

<sup>29</sup> “Declaration on Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”, Article 1. Available at: <http://www.ohchr.org/Documents/Publications/GuideMinoritiesDeclarationen.pdf>

<sup>30</sup> Ibid. Article 1.

<sup>31</sup> Ibid. Article 2-6.



with human rights by declaring that “the protection of national minorities and the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.”<sup>32</sup> The Framework Convention does not only insist on the normative necessity to protect minority rights but clearly says “any discrimination based on belonging to a national minority shall be prohibited.”<sup>33</sup> The rights to publicly use the language or freely practice the religion are supported with concrete obligatory instructions on how to achieve this. For example:

In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.<sup>34</sup>

In the same respect, though not directly, the *United Nations Convention on the Protection and Promotion of the Diversity of Cultural Expressions* from 2005 deals with the protection of minority rights, i.e. in its cultural aspect. The Convention recognizes the significance of minorities’ cultures as an important feature of the world’s overall cultural diversity by stating that “the protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.”<sup>35</sup>

In 1999, the OSCE High Commission for National Minorities together with the Foundation on Inter-Ethnic Relations and the Raoul Walenberg Institute of Human Rights assembled a team of renowned experts in the field of human rights to produce the *Lund Recommendations*, which give concrete and practical suggestions on how governments can improve participation of minorities in public life. The Recommendations addresses an array

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<sup>32</sup> “Framework Convention on the Protection of National Minorities”, Article 1. Available at: [http://www.florina.org/rainbow/framework\\_convention\\_e.pdf](http://www.florina.org/rainbow/framework_convention_e.pdf)

<sup>33</sup> Ibid. Article 4.

<sup>34</sup> Ibid. Article 14.

<sup>35</sup> “Convention on the Protection and Promotion of the Diversity of Cultural Expressions”, Article 3.1. Available at: <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>

of instruments and solution such as reserved parliamentary seats and quotas in public administration; adjustments to the electoral system that enable members of minorities to be elected; specific power-sharing arrangements on the local level; and the creation of consultative and advisory bodies for minority issues.<sup>36</sup> The distinctive quality of the Recommendations is in the last aspect – consultative and advisory bodies – it introduces a beneficial instrument of communication and coordination between the central state authority and minorities.<sup>37</sup>

### *1.3. Human rights and minority rights in documents related to Kosovo*

The foundations of international military and civilian presence in Kosovo are set in the *Resolution 1244*, adopted by the UN Security Council in June 1999. Besides the definitions concerning tasks and obligations of the military and civilian mission, the significant portion of the Resolution is devoted to human rights. “Protecting and promotion of human rights”<sup>38</sup> is one of the main responsibilities of the international administration, as well is the task to “establish a secure environment in which refugees and displaced persons can return home in safety.”<sup>39</sup> This goal is emphasized as crucial by being mentioned three more times throughout the Resolution.

*The Constitutional Framework for Provisional Self-Government in Kosovo* was promulgated in 2001 by the Special Representative of the Secretary-General, the supreme civilian authority in Kosovo, as the de facto constitution of the province under international administration. Chapter 3 states that “the Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms” named in key international documents such as the Universal Declaration on Human Rights,

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<sup>36</sup> “The Lund Recommendations on the Effective Participation of National Minorities in Public Life”. *Foundations of Inter-Ethnic Relations. Foundation on Inter-Ethnic Relations*. 1999. Available at: [http://www2.ohchr.org/english/bodies/hrcouncil/minority/docs/Lund\\_Recommendations.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/minority/docs/Lund_Recommendations.pdf)

<sup>37</sup> Unangst, Megan Folk. “Minority Inclusion in Policymaking in Kosovo: The Creation and Role of the Consultative Council for Community”. *Central European University, Department of Public Policy*. Budapest 2009, pp:9-10. Available at: [http://www.etd.ceu.hu/2009/unangst\\_megan.pdf](http://www.etd.ceu.hu/2009/unangst_megan.pdf)

<sup>38</sup> “UN Security Council Resolution 1244”, Annex 2.6. 10 Jun 1999. Available at: <http://www.unmikonline.org/misc/N9917289.pdf>

<sup>39</sup> Ibid, Paragraph 9c.

the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Racial Discrimination. Chapter 4 of the Constitutional Framework defines rights of all ethnic, religious and linguistic communities in Kosovo set in force to “preserve, protect and express their ethnic, cultural, religious and linguistic identity.” Some of those rights, among others, are right to:

- Use their language and alphabets freely, including before the courts, agencies, and other public bodies in Kosovo;
- Receive education in their own language;
- Enjoy equal opportunity with respect to employment in public bodies at all levels and with respect to access to public services at all levels;
- Enjoy unhindered contacts among themselves and with members of their respective Communities within and outside of Kosovo;
- Promote respect for Community traditions;
- Preserve sites of religious, historical, or cultural importance to the Community, in cooperation with relevant public authorities;
- Receive and provide public health and social services, on a nondiscriminatory basis, in accordance with applicable standards;
- Operate religious institutions.<sup>40</sup>

Following Kosovo’s declaration of independence in 2008, the provisional Parliament enacted the *Constitution of the Republic of Kosovo*. Essentially, the Constitution is the expanded version of the Constitutional Framework, with more accurately defined rights of minority communities and mechanisms for their implementation. They are included in Chapter 2, Fundamental Rights and Freedoms, as well as in Chapter 3, Rights of Communities and Their Members.

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<sup>40</sup> Special Representative of the Secretary-General of the UN. Constitutional Framework for Provisional Self-Government in Kosovo, Chapter 4.4. 15 May 2001. Available at: [http://www.unmikonline.org/pub/misc/FrameworkPocket\\_ENG\\_Dec2002.pdf](http://www.unmikonline.org/pub/misc/FrameworkPocket_ENG_Dec2002.pdf)

#### 1.4. Definition of minority communities

Due to Kosovo's disputed status, with Kosovo Serb's and Kosovo Albanian's gravely confronted views on the issue, the international administration intentionally avoided to refer to any of the ethnic groups as a *minority*. Therefore, the weighty documents, such as the Constitutional Framework<sup>41</sup>, and the Constitution<sup>42</sup>, rather use the term *community* that describes a group based on ethnicity, religion and/or language, without inclinations to their minority or majority status. However, taking into account that around 90 percent of the population in Kosovo is Albanian, all other ethnic groups in fact have the de facto status of minorities. Therefore these groups will be referred to as *minority communities* in this thesis. The largest minority communities in Kosovo are Serbs, and Roma, Ashkali and Egyptians (RAE), with constitutionally recognized communities of Bosniaks, Goranis, and Turks.

*Serbs* are the largest minority community in Kosovo, numbering between 100,000<sup>43</sup> and 111,000<sup>44</sup>, which is roughly five percent of the population. They speak the Serbian language and affiliate exclusively with Orthodox Christianity. Prior to the withdrawal of the Serbian forces and the establishment of the international administration in 1999, the number of Serbs was significantly higher, around 300,000. Almost 200,000 of them left mainly to Serbia, either willingly because of fear for their security or were forcefully displaced. Serbs are the majority population in the three northern municipalities of Zvečan, Leposavić and Zubin Potok, including the northern part of divided city Mitrovica, and in

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<sup>41</sup> See "Constitutional Framework for Provisional Self-Government in Kosovo", Chapter 4. Available at: [http://www.unmikonline.org/pub/misc/FrameworkPocket\\_ENG\\_Dec2002.pdf](http://www.unmikonline.org/pub/misc/FrameworkPocket_ENG_Dec2002.pdf)

<sup>42</sup> See "Constitution of the Republic of Kosovo", Chapter 3. Available at: <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

<sup>43</sup> Amnesty International, "Prisoners in our Own Homes: Amnesty International's concerns for the human rights in Kosovo/Kosova". pp:4. April 2003. Available at: <http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>44</sup> Statistical Office of Kosovo. "Ndryshimet demografike të popullsisë së Kosovës në periudhën 1948-2006" (Demographic changes of the population of Kosovo in the period 1948-2006). Priština. 2008. pp:7. Available at: <http://esk.rks-gov.net/esk>

the southern municipality of Štrpce. Elsewhere in Kosovo, Serbs live in mono-ethnic rural villages or under the Kfor protection in majority Albanian urban areas.<sup>45</sup>

*Roma, Ashkali and Egyptians*, often jointly referred to as the RAE community, number to around 24,000 people.<sup>46</sup> Since 1999, around 45,000 RAE have been displaced in Serbia or Montenegro or live in Macedonia as refugees. Prior to the 1990s, all three communities were considered to be Roma. During the Kosovo war, and especially after it, they started to differ between themselves. Since Serbian- and Roma-speaking Kosovo Roma are considered by Albanians to be ‘Serbian collaborators’<sup>47</sup> during the war, Albanian-speaking Roma started to define themselves as a distinctive ethnic group, Ashkali, to avoid retribution. Furthermore, Egyptians, who also speak Albanian, claim their descent from ancient Egypt. All three groups are nominally Muslims. Roma are today overwhelmingly concentrated in areas inhabited by Serbs; Ashkali live alongside Albanians, while Egyptians are mainly concentrated in the cities of Đakovica and Peć, with usually higher living standards.<sup>48</sup>

*Bosniaks* belong to the group of Slavic Muslims. *Bosniaks* identify themselves with the Muslim population of Bosnia and Sandžak region in Serbia, which adopted the name in the 1990s. Prior to this, in socialist Yugoslavia, they were regarded as “Muslims in the ethnic sense”.<sup>49</sup> Before 1999, the community numbered around 35,000, while today it has been reduced to around 20,000. Bosniaks themselves claim that their community in Kosovo consisted of at least 100,000 people in 1991, and of approximately 57,000 currently. They

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<sup>45</sup> Amnesty International, “Prisoners in our Own Homes: Amnesty International’s concerns for the human rights in Kosovo/Kosova”. April 2003. pp:4. Available at: <http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>46</sup> Statistical Office of Kosovo. “Ndryshimet demografike të popullsisë së Kosovës në periudhën 1948-2006” (Demographic changes of the population of Kosovo in the period 1948-2006). Priština. 2008. pp:7. Available at: <http://esk.rks-gov.net/esk>

<sup>47</sup> During the war, Serbian forces were using Roma to transport and bury killed Albanians.

<sup>48</sup> Amnesty International, “Prisoners in our Own Homes: Amnesty International’s concerns for the human rights in Kosovo/Kosova”. April 2003. pp:7. Available at: <http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>49</sup> The term was introduced for the first time in the 1961 Yugoslavian population census.

live in both Albanian-populated areas (Đakovica, Uroševac), as well as in majority Serbian areas (the northern Mitrovica, in a neighborhood called Bošnjačka mahala).<sup>50</sup>

*Gorani* are also Slavic Muslims, concentrated in the municipality Dragaš, in the mountainous Gora region, probably the most remote area in Kosovo. The Serbian-speaking and loyal to Serbia after 1999, *Gorani* were and still are prosecuted by Albanians. This caused the reduction of their number from 12,000 in 1999 to approximately 6,000 today.<sup>51</sup>

*Turks* are completely concentrated in the Prizren municipality, numbering to around 12,000. They are well integrated in the social and cultural life of the overwhelmingly Albanian populated town.<sup>52</sup>

### *1.5. Approaches in defining Kosovo's status and institutions*

*Kosovo* is the subject of territorial dispute between the Republic of Serbia and the self-proclaimed Republic of Kosovo, in which both claim sovereignty over the territory. The Republic of Serbia considers “the Province of Kosovo and Metohija<sup>53</sup> as an integral part of the territory of Serbia, that has the status of a substantial autonomy within the sovereign state of Serbia.”<sup>54</sup> On the other hand, ever since the unilateral declaration of independence on 17 February 2008, the Republic of Kosovo perceives itself as “an independent, sovereign, democratic, unique and indivisible state.”<sup>55</sup>

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<sup>50</sup> Baldwin, Clive. “Minority Rights in Kosovo under International Rule”. *Minority Rights Group International*. London. 2006. pp:9. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>51</sup> Baldwin, Clive. “Minority Rights in Kosovo under International Rule”. *Minority Rights Group International*. London. 2006. pp:9. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>52</sup> Amnesty International, “Prisoners in our Own Homes: Amnesty International’s concerns for the human rights in Kosovo/Kosova”. April 2003. pp:6. Available at: <http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>53</sup> Official Serbian name for Kosovo. Term *Metohija* is derived from the Greek word *metochion*, which means monastic possession.

<sup>54</sup> “Constitution of the Republic of Serbia”, Preamble. Available at: <http://www.predsednik.rs/mwc/epic/doc/ConstitutionofSerbia.pdf>

<sup>55</sup> “Constitution of the Republic of Kosovo”, Chapter 1, Article 1, Paragraph 1. Available at: <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

This thesis will refer to Kosovo, whether to the territory, institutions or population, in full compliance with the effective United Nations Security Council Resolution 1244, which “reaffirms the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia<sup>56</sup>” and “substantial autonomy and meaningful self-administration for Kosovo”<sup>57</sup>. Therefore, *Kosovo* will be used as a term, which defines the province of the Republic of Serbia currently under the administration of the United Nations as detailed in the Resolution 1244. Furthermore, all institutions in present-day Kosovo, “which are in hands of Kosovo’s leaders and civil servants,”<sup>58</sup> will be referred to as the provisional authorities or, as their official name is, *Provisional Institutions of Self-Government (PISG)*.<sup>59</sup>

However, taking into account that under the international administration Kosovo developed a substantial institutional structure of self-government and has been recognized by 75<sup>60</sup> member-states of the UN, the thesis acknowledges the fact that Kosovo is *de facto* an independent territorial entity over which Serbia currently has no effective sovereignty.

#### *1.6. Definition and structure of the international administration*

The term *international administration* will be used in the thesis to jointly address all international organizations and institutions established in Kosovo by the UN Security Council Resolution 1244 and subsequent documents based on it. In that respect, the international administration in Kosovo refers to UNMIK, Kfor, OSCE and Eulex, and other structures derived out or under their competencies.

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<sup>56</sup> Republic of Serbia is the legal successor of both the Federal Republic of Yugoslavia (1992-2003) and the State Union of Serbia and Montenegro (2003-2006).

<sup>57</sup> “UN Security Council Resolution 1244”. 10 Jun 1999. pp:2 Available at: <http://www.unmikonline.org/misc/N9917289.pdf>

<sup>58</sup> Special Representative of the Secretary-General of the UN. “Constitutional Framework for Provisional Self-Government in Kosovo”. 15 May 2001. pp:3. Available at: [http://www.unmikonline.org/pub/misc/FrameworkPocket\\_ENG\\_Dec2002.pdf](http://www.unmikonline.org/pub/misc/FrameworkPocket_ENG_Dec2002.pdf)

<sup>59</sup> As defined by the Constitutional Framework for Provisional Self-Government in Kosovo.

<sup>60</sup> The situation on the 19 May 2011 according to The Ministry of Foreign Affairs of the Republic of Kosovo. “Countries that have recognized the Republic of Kosova”. Available at: <http://www.mfa-ks.net/?page=2,33>

The *United Nations Interim Administration in Kosovo* or UNMIK is the interim civilian administration in Kosovo, placed under the authority of the UN.<sup>61</sup> The head of UNMIK is also the Special Representative of the Secretary-General of the UN. Initially, UNMIK was based on a four-pillar structure; Pillar I: Police and justice; Pillar II: Civil administration; Pillar III: Democratization and institution building; and Pillar IV: Reconstruction and economic development. The first two pillars had been under direct auspices of UNMIK, while the third and fourth pillar was entrusted to the OSCE and the EU, respectively. UNMIK played a crucial role in administering Kosovo in the first few years of the international rule, but its significance started to decline in 2001 and especially in 2004, when numerous powers were systematically transferred to the provisional authorities. After the installment of Eulex, which took over almost all responsibilities from the first pillar, UNMIK's role was downscaled to a mere symbolic one.<sup>62</sup>

The *Kosovo Forces* or Kfor is a multinational, NATO-led peacekeeping mission in Kosovo, in charge of establishing a peaceful and secure environment. While UNMIK represents a crucial aspect of the international civilian presence in Kosovo, Kfor does so militarily. Beside public security, Kfor's initial mandate was to deter the possible return of Serbian forces to Kosovo, to disarm KLA, and to assist humanitarian relief. Today, its main tasks are the assistance to international and provisional authorities, demining, weapons destruction, border control, medical assistance and security of minorities. From the initial 50,000-strong mission in 1999 and 2000, Kfor has been reduced to current 6,300 troops, with a plan for further reduction down to 5,000 in the spring of 2011. The whole territory of Kosovo is divided into five sectors – French, Italian, German, British, and American – for which armies of these five leading Kfor country-contributors are responsible respectively. Though both UNMIK and Kfor were established by the Resolution 1244, Kfor, unlike UNMIK, is not responsible to the UN.<sup>63</sup>

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<sup>61</sup> "UN Security Council Resolution 1244". 10 Jun 1999. Available at: <http://www.unmikonline.org/misc/N9917289.pdf>

<sup>62</sup> Wet, Erika de. "The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of EULEX". *American Society of International Law*. The American Journal of International Law, Vol. 103, No.1. Januar 2009. pp:84. Available at: <http://www.jstor.org/stable/20456723>

<sup>63</sup> NATO. "NATO's role in Kosovo". 16 May 2011. Available at: [http://www.nato.int/cps/en/natolive/topics\\_48818.htm](http://www.nato.int/cps/en/natolive/topics_48818.htm)



*The Organization for Security and Co-operation in Europe Mission in Kosovo*, or OSCE Mission in Kosovo, was established in 1999 “within overall framework of UNMIK to take the lead role in matters relating to institution- and democracy-building and human rights.”<sup>64</sup> The mission’s three main fields of activities are support of democratic institutions and good governance, promotion of human and community rights, and improvement of security and public safety. The OSCE Mission in Kosovo, upon its inception, was in charge of UNMIK's second pillar on the basis of experience that the organization gained in its previous work in Kosovo and the former Yugoslavia. With a staff numbering of 680 people, it is the largest OSCE field mission. Despite being only one of the parts in UNMIK's structure, the significance of the OSCE Mission in Kosovo outgrew that of UNMIK. The major task of the OSCE in Kosovo, after UNMIK's restructuring in 2009, is monitoring, particularly in regard to reporting and early warning. The OSCE supervises and advises the provisional authorities, facilitates and funds various programs for minority communities, and logistically supports other international organizations, such as the UNHCR, the Council of Europe and the EU.<sup>65</sup>

The *European Union Rule of Law Mission in Kosovo* or Eulex is the EU justice and police mission in Kosovo. With staff of 3,200, it is the largest civilian mission ever launched under the Common Security and Defense Policy.<sup>66</sup> Eulex was established in 2008, after Kosovo's unilateral declaration of independence and has been a matter of controversy, since its initial role was to replace UNMIK according to the Ahtisaari Plan. Since Serbia opposes Kosovo's independence, which was the key point of the Plan, it did not want to accept the Eulex deployment. Eventually, a compromise was reached and Eulex was officially set up as a part of UNMIK, though it almost completely took over its competences.<sup>67</sup> The central aim of the mission is to assist and support the Kosovo authorities in the rule of law, specifically in the police, judiciary and customs areas.

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<sup>64</sup> OSCE. Decision No.305. 237<sup>th</sup> plenary meeting. PC Journal No.237. Agenda item 2. 1 July 1999. Available at: <http://www.osce.org/pc/28795>

<sup>65</sup> OSCE. “Overview”. Available at: <http://www.osce.org/kosovo/43378>

<sup>66</sup> EULEX. “What is EULEX”. Available at: <http://www.Eulex-kosovo.eu/en/info/whatisEulex.php>

<sup>67</sup> Wet, Erika de. “The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of EULEX”. *American Society of International Law. The American Journal of International Law*, Vol. 103, No.1. Januar 2009. pp:84-89. Available at: <http://www.jstor.org/stable/20456723>

## 2. HISTORY OF THE KOSOVO CRISIS

Kosovo is a region of approximately 11,000 sq. kilometers, with an estimated population of two million.<sup>68</sup> Similar to most of the Balkan Peninsula, many ethnic, religious and linguistic groups have inhabited it throughout history. For Serbs and Albanians, particularly, Kosovo is crucially important as being a central part of their respective identities, cultures, history and mythology. The centuries-old exclusive claims of the territory by each of these nations, led to the creation of a concept where in Kosovo there is no place for the other one and, subsequently, to a conflict that fully erupted at the end of the 21<sup>st</sup> century.<sup>69</sup>

Serbs perceive Kosovo as the cradle of their nation, culture and statehood. It is the place where the first Serbian state was formed in the 8<sup>th</sup> century. A few centuries later, in the 13<sup>th</sup> and 14<sup>th</sup> century, Serbian rulers built hundreds of churches and monasteries there, the most valuable part of today's national heritage, when Serbia was the leading regional power throughout most of the era. It is also the place where that era abruptly ended with the 1389 Kosovo battle, when Serbs were defeated by the Ottoman Empire, occupied, and ruled by it for the next 450 years. Under the Ottoman servitude, the Kosovo battle evolved into a national myth and the single most important event in Serbian history to date.<sup>70 71</sup>

For Albanians, Kosovo is a part of the historic Albanian lands. Considering to have descended from ancient Illyrians, Albanians claim to have been in Kosovo prior to the arrival of Slavic tribes in the Balkans. In the early stages of Ottoman rule, they were fiercely rebelling, but eventually most of the population converted to Islam and was

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<sup>68</sup> The last census in Kosovo was conducted in April 2011, but its preliminary results were not published by the time the thesis went to press. The current population data in Kosovo are based on estimates made by OSCE and UN.

<sup>69</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. pp:7. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>70</sup> Jansen, G. Richard. "Albanians and Serbs in Kosovo: An Abbreviated History". *Colorado State University*. 25 April 1999. Updated 22 July 2008. Available at: <http://lamar.colostate.edu/~grjan/kosovohistory.html>

<sup>71</sup> Obradovic, Jelena. "Kosovo: The View from Serbia". *European Institute for Security Studies*. April 2008. Available at: <http://www.iss.europa.eu/uploads/media/kosovo.pdf>

granted a substantial amount of autonomy by Istanbul.<sup>72</sup> In 1878, the League of Prizren was founded in Kosovo as a response to the leading European powers' intentions to cede Albanian-populated territories to newly emerging countries of Serbia, Bulgaria and Greece. The foundation of the League of Prizren is one of the most important events in the modern Albanian history.<sup>73</sup>

After the First Balkan War, when Ottomans were finally driven out from most of the Balkans, Kosovo was absorbed by Serbia. For Serbs, this was the ultimate national victory, while for Albanians it was just the replacement of an occupier. Together with Serbia, Kosovo became a part of the Kingdom of Yugoslavia after WW1. During WW2, it was occupied by Italy. After WW2 it remained within Yugoslavia, as a socialist federal republic. In 1974, when a new constitution was introduced virtually transforming Yugoslavia from a federation into confederation, Kosovo was granted a broad autonomy, becoming one of the two *autonomous provinces* of the Socialist Republic of Serbia. Although officially having lower competences than other six republics of which Yugoslavia was comprised, Kosovo was essentially a republic within a republic, being equally represented in the Presidency, a collective chief of state, alongside with other constituent republics.<sup>74</sup>

In 1981, only one year after the death of Josip Broz Tito, Yugoslavia's strongmen and symbol of unity, students of the Priština University initiated mass demonstrations demanding that Kosovo become a republic, separates from Yugoslavia and joins Albania.<sup>75</sup> At the same time, Kosovo's Serbian population was increasingly complaining about their status in the province, as being growingly oppressed by the Albanian majority. Riding on

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<sup>72</sup> Jansen, G. Richard. "Albanians and Serbs in Kosovo: An Abbreviated History". *Colorado State University*. 25 April 1999. Updated 22 July 2008. Available at: <http://lamar.colostate.edu/~grjan/kosovohistory.html>

<sup>73</sup> Jelavich, Barbara. "History of the Balkans: Eighteenth and nineteenth centuries". *Cambridge University* 1999. pp: 361. Available at: <http://books.google.com/books?id=qR4EeOrTm-0C&pg=PA361&dq=league+of+prizren&cd=2#v=onepage&q=league%20of%20prizren&f=false>

<sup>74</sup> Vidmar, Jure. "International Legal Responses to Kosovo's Declaration of Independence". *Vanderbilt Journal of Transitional Law*, Vol. 42. pp:784-787. Available at: <http://www.google.ba/url?sa=t&source=web&cd=3&ved=0CCMQFjAC&url=http%3A%2F%2Fwww.vanderbilt.edu%2Fpublications%2Fjournal-of-transnational-law%2Farchives%2Fvolume-42-number-3%2Fdownload.aspx%3Fid%3D3954&rct=j&q=kosovo%20albanian%20declaration%20of%20independence%201991&ei=IVG0TY3fDITDtAb6pfTsCw&usq=AFQjCNGbKZYVL2N3N3ernpDQuEu3xWOWSw>

<sup>75</sup> Bulatović, Predrag. "Šta se događalo na Kosovu" (What was happening in Kosovo). *Politika's Little Library edition*. Belgrade. May 1981. pp:10.

the surging wave of nationalism on both sides and increasing inter-ethnic distrust, then a little-known Communist Party official Slobodan Milošević, promoted himself as the ultimate Serb leader during his visit to Kosovo in 1987. Two years later, he abolished Kosovo's autonomy, with power to run the province returning to Belgrade. The move was followed by a systematic discrimination of Albanians in the following decade. Albanian-language media and education were substantially reduced, and Albanians were fired from state jobs and discriminated against when hiring for new positions. Kosovo Albanians responded by civil disobedience, establishing their own parallel political and educational institutions.<sup>76</sup> In 1990, Kosovo's shadow leadership with Ibrahim Rugova as its president, declared independence from Serbia. This act went relatively unnoticed in the international community and the self-proclaimed independent Kosovo was recognized only by Albania.<sup>77</sup>

One of the reasons for this was probably the fact that the world's attention was focused on the disintegrating Yugoslavia and bloody conflicts emerging in Croatia and Bosnia. While these conflicts were concluded by the Dayton Peace Agreement in 1995, the problem of Kosovo had not been addressed.<sup>78</sup> This increased frustration among Albanians who lost their faith in passive resistance proclaimed by Rugova and turned toward younger and arm rebellion-oriented leaders such as Hashim Thaqi and Agim Ceku. By the end of 1996, a small number of armed Kosovo Albanians, calling themselves Kosovo Liberation Army (KLA), started to attack Serbian police and military posts and

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<sup>76</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. pp:7. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>77</sup> Vidmar, Jure. "International Legal Responses to Kosovo's Declaration of Independence". *Vanderbilt Journal of Transitional Law*, Vol. 42. pp:789. Available at: <http://www.google.ba/url?sa=t&source=web&cd=3&ved=0CCMQFjAC&url=http%3A%2F%2Fwww.vanderbilt.edu%2Fpublications%2Fjournal-of-transnational-law%2Farchives%2Fvolume-42-number-3%2Fdownload.aspx%3Fid%3D3954&rct=j&q=kosovo%20albanian%20declaration%20of%20independence%201991&ei=IVG0TY3fDITDtAb6pfTsCw&usq=AFQjCNGbKZYVL2N3N3ernpDQuEu3xWOwSw>

<sup>78</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. pp:7. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

vehicles in the hit-and-run manner. This militant group was formed back in 1990, but remained passive until the beginning of 1996.<sup>79</sup>

During 1998, sporadic armed clashes between the KLA and Serbian security forces escalated into a full-fledged war. Serbia drastically increased its military and police presence in the province, while more and more Albanians joined the KLA, which at that point contained over 10,000 armed men.<sup>80</sup> The conflict caused major destruction, displacements and killings of both Albanian and Serbian civilians. Western powers, the US and the UK foremost, scraped the KLA from their lists of terrorist organizations in 1998 and started to support it diplomatically and logistically.<sup>81</sup>

After the failed attempts of the US to broker a peace deal between two sides, in March 1999 NATO initiated air strikes against the Federal Republic of Yugoslavia. The goal was to force the Serbian military and police to withdraw from Kosovo. NATO intervened to prevent war crimes and ethnic cleansing, but these dramatically increased as a direct result of intervention, prompting around 800,000 people, overwhelmingly Albanians, to temporarily leave Kosovo.<sup>82</sup> After the 78-day long UN Security Council-unauthorized aerial bombardment of Serbia, which claimed over 2,000 civilian lives and 30-billion dollars in damage<sup>83</sup>, Serbia agreed to withdraw from Kosovo and handover the administration of province to the UN. After nine years of international rule, backed by the major Western powers, Kosovo unilaterally declared independence from Serbia in February 2008.<sup>84</sup>

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<sup>79</sup> Roland Keith. "Failure of Diplomacy: Returning OSCE Human Rights Monitor Offers A View From the Ground in Kosovo". *The Democrat*. May 1999. Available at: <http://www.slobodan-milosevic.org/before-aggression.htm>

<sup>80</sup> Global Security. "Kosovo Liberation Army". 27 April 2005. Available at: <http://www.globalsecurity.org/military/world/para/kla.htm>

<sup>81</sup> Ibid.

<sup>82</sup> Foley, Conor. "The Thin Blue Line: How Humanitarianism Went to War". *Verso*. London and New York. 2008. pp:78, 90.

<sup>83</sup> Akademedija Srbija. NATO bombardovanje Jugoslavije (Nato bombing of Yugoslavia). Available at: [http://www.akademediasrbija.com/index.php?option=com\\_content&view=article&id=328:nato-bombardovanje-jugoslavije-&catid=38:cat-komentari-vesti&Itemid=54](http://www.akademediasrbija.com/index.php?option=com_content&view=article&id=328:nato-bombardovanje-jugoslavije-&catid=38:cat-komentari-vesti&Itemid=54)

<sup>84</sup> BBC News. Kosovo MPs proclaim independence. 17 February 2008. Available at: <http://news.bbc.co.uk/2/hi/europe/7249034.stm>

### 3. SECURITY AND FREEDOM OF MOVEMENT

*“Everyone has the right to life, liberty and security of person”*

*- Universal Declaration of Human Rights, Article 3*

*“...The responsibilities of the international security presence...will include:*

*...Ensuring public safety and order...”*

*- Security Council Resolution 1244, Paragraph 9, Subparagraph (d)*

This chapter aims to scrutinize aspects of security and freedom of movement issues of the minority population; the major focus issues of the international community upon the establishment of its rule in Kosovo.<sup>85</sup> The major security-related cases will be taken into consideration, as they most profoundly reflect a grave security situation in which Kosovo's minorities are for the past 12 years. It then examines behavior and a response of the international administration during and after the cases occurred and focuses on the trend of impunity as the phenomenon that rose from their mismanagement. The last part of the chapter is devoted to ethnic enclaves and ghettos, another distinctive phenomenon of Kosovo, directly tied to the absence of security and, as a result, freedom of movement.

#### *3.1. Post-June 1999 and 2000-2001 violence*

The withdrawal of Serbian police and military from Kosovo started on 10 June 1999 and was completed in the 11 following days.<sup>86</sup> This event marked the beginning of a period of roughly two and a half years during which minority communities, particularly Serbs and Roma, experienced most brutal violations of basic human rights, including the violations of the supreme human right – the right to life. In the second half of 1999 and

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<sup>85</sup> “UN Security Council Resolution 1244”. 10 June 1999. Available at:  
<http://www.unmikonline.org/misc/N9917289.pdf>

<sup>86</sup> As stipulated by the Military Technical Agreement between the International Security Force and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, 9 June 1999. Available at:  
<http://www.nato.int/kosovo/docu/a990609a.htm>

throughout 2000 and 2001, members of Kosovo's minorities were subjected to a brutal and intensively violent campaign, which consisted of threats, beatings, abductions, tortures, arbitrary killings, expulsions, lootings, arsons and destruction of cultural heritage – for no other reason than their ethnic background. It is certain that some of the attacks on minorities can be prescribed to armed criminal gangs with opportunistic motives, but there are also evidence that elements of the KLA are largely responsible for post-war attacks on Serbs, Roma, and other non-Albanians.<sup>87</sup>

Between 10 June 1999 and 4 June 2000, in 4,768 attacks against members of minorities (4,590 attacks on Serbs, solely), 951 persons were killed, 902 of which were Serbs. During the same period, 903 non-Albanians were kidnapped or went missing, 869 of them Serbs.<sup>88</sup> It is estimated that the number of murders of minorities was at least 50 a week in the summer of 1999 and three a week in October of the same year.<sup>89</sup>

Two particular cases depict the harsh reality of Serbs and other minorities few months after the arrival of the international military and civilian mission. The first one occurred on 17 July 1999, when 14 Serb farmers were killed while harvesting in the village Staro Gracko, municipality Lipljan, central Kosovo. They were shot in cold blood, from automatic weapons from close distance, in an already prepared ambush.<sup>90</sup> The second is the case of public lynching on the streets of Priština, Kosovo's capital. During a celebration of the Albanian Flag Day on 28 November 1999, the crowd pulled out of a car a Serb university professor from Priština, his wife and his mother-in-law. All three were severely

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<sup>87</sup> Dimitrijević, Nenad and Petra Kovacs. "Managing Hatred and Distrust: The Prognosis for Post-Conflict Settlement in Multiethnic Communities in the Former Yugoslavia". Part Three: An Imposed Coexistence. Anastasijević, Duška. Good Policies Needed Before Good Practice Can Thrive in Kosovo. *Open Society Institute*. Budapest. 2004. pp:107

<sup>88</sup> Federal Republic of Yugoslavia, Ministry of Foreign Affairs, 2000. Available at: [http://www.kosovo.net/fry\\_overview.html](http://www.kosovo.net/fry_overview.html)

<sup>89</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. pp:14. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>90</sup> CNN. "14 Serb farmers killed in Kosovo, NATO reports". 24 July 1999. Available at: [http://articles.cnn.com/1999-07-24/world/9907\\_24\\_kosovo.02\\_1\\_serb-farmers-lipljan-Kfor-officials?\\_s=PM:WORLD](http://articles.cnn.com/1999-07-24/world/9907_24_kosovo.02_1_serb-farmers-lipljan-Kfor-officials?_s=PM:WORLD)

beaten, while the professor was shot dead by a handgun. The same would have happened to the women if the UNMIK police and Kfor did not react and disperse the lynching mob.<sup>91</sup>

While the violence against minorities was surging during June, July and August of 1999, the autumn of that year saw a drop in ethnically motivated crimes and murders, only to take an upward turn in the first two months of 2000. In a span of five days, between January 12<sup>th</sup> and 17<sup>th</sup>, nine persons, all non-Albanians, were reported murdered; a Bosniak family of four was murdered in their home near Prizren; three Serbs were killed in Pasjan, the village near Gnjilane; and two Roma were killed in Đakovica while trying to protect their home from looting.<sup>92</sup>

Early February of 2000 witnessed an incident that prompted a chain of violent events and caused the most serious security crisis throughout Kosovo to date. On 2 February, a clearly marked humanitarian bus belonging to the UNHCR, with 49 Kosovo Serbs on board, was targeted by a rocket, resulting in two people killed and three heavily injured. In the two following days, riots erupted in the divided city of Mitrovica, leaving eight people dead. It also caused the displacement of 1,650 Albanians from the Serb-controlled northern part of the city and the reduction of Serbian population in the Albanian dominated southern part to only 20 people. Offices of the Red Cross, UNHCR, OSCE, UNMIK and Kfor were looted and burned down.<sup>93</sup>

As a consequence of the changes that the UNMIK police and Kfor underwent in terms of protection of minorities after the February violence, the number of murders decreased, whereas arsons became the major form of attacks on non-Albanians and their property. In the first half of 2000, arson attacks were mainly carried out in the wider Priština-region and to a lesser extent in the Gnjilane region. Serb-owned properties were hit the hardest, with 83 Serb houses burned, out of the 179 reported in this period.<sup>94</sup> Though

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<sup>91</sup> OSCE. "Fourth Assessment on the Situation of Ethnic Minorities in Kosovo". *OSCE Mission in Kosovo*. 2000. pp:18. Available at: <http://www.osce.org/kosovo/13308>

<sup>92</sup> Ibid. pp:7

<sup>93</sup> UN Security Council. "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo". 3 March 2000. pp:5. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/325/36/IMG/N0032536.pdf?OpenElement>

<sup>94</sup> UN Security Council. "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo". 6 June 2000. pp:7. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/463/39/PDF/N0046339.pdf?OpenElement>



attacks on property were a few times higher than the attacks on life during this period, “the number of murders, attempted murders and grenade attacks against ethnic minorities remained unacceptably high.”<sup>95</sup> During 2000, 112 persons belonging to the minority communities were killed in Kosovo.<sup>96</sup>

The year 2001 brought a new escalation of violence against minorities, mainly Serbs. On 17 February, the lead bus of the Niš Express, a convoy of busses with Kosovo Serbs on board, was destroyed by a remote-controlled bomb planted by the road. In the most serious attack on minorities since 1999, 12 people, including a two-year-old child, died and more than 40 were injured. The convoy, escorted by Swedish soldiers from Kfor, was en route to Gračanica, a town in central Kosovo, where displaced Serbs intended to visit graves of their deceased family members and the properties they were forced to leave in an overwhelmingly Albanian-populated area. Only a week before the incident, another convoy with Serbs on board, also visiting cemeteries, found itself under heavy sniper fire, however nobody was injured or killed.<sup>97</sup> The bombing of Niš Express, a classical ethnically motivated terrorist act, showed that extremists now were targeting not only Serbs and other minorities, who remained in Kosovo, but also those who fled the terror in the second half of 1999 and were reconsidering their return.

Throughout the rest of the year deadly attacks on minorities continued: On 27 February, Branka and Savita Jović, an elderly Serb couple were found beaten to death in Kamenica; in April and May at least three Serbs were killed in separate drive-by shootings in the Vitina municipality; on 5 August, a hand grenade was thrown into a Serb couple’s backyard in Černica, near Gjiilan, killing the husband and injuring his wife; on 7 August, an attack on a convoy of Serb cars near Podujevo resulted in wounding of three people; on 4 September, a Serb farmer was stabbed to death in Vrbovac near Vitina; on 28 September a former Serb police officer, Trajan Trajković, was shot and killed in Koprivnica near Gjiilan;

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<sup>95</sup> UN Security Council. “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo”. 6 June 2000. pp:7. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/463/39/PDF/N0046339.pdf?OpenElement>

<sup>96</sup> Amnesty International, “Prisoners in our Own Homes: Amnesty International’s concerns for the human rights in Kosovo/Kosova”. April 2003. pp:10. Available at: <http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>97</sup> Ibid. pp:12,14.

on 30 September, a Serb woman was killed by an explosive device planted shortly beforehand in a field near Vitina; on 2 December, an elderly Serb woman was killed in a drive-by shooting as she was walking home with her husband from the train station at Obilić.<sup>98</sup> Overall, 44 persons of non-Albanian ethnicity were killed during 2001 in ethnically motivated crimes, 30 of which were Serbs.<sup>99</sup>

The reduction of killings and violent attacks on minorities in the two following years, 2002 and 2003, dropped, not as a result of improved security environment but rather “due to the fact that minority ethnic groups remain in physically separated communities.”<sup>100</sup> However, on 13 August 2003, a particularly brutal ethnically motivated crime shook the Serb community in Kosovo and echoed throughout the region. While swimming in the river Bistrica that separates the Albanian village Zahač and the Serb village Goraždevac in the Peć municipality, few dozen of Serb teenagers were shot at from the nearby bushes. In the attack, two boys aged 12 and 19 were killed, while another four were heavily wounded. Attackers used automatic weapons and fled in the direction of Zahač after the attack.<sup>101</sup>

### 3.2. The March 2004 riots

By the beginning of 2004 violence against minorities significantly decreased, especially compared to the period June 1999 – 2001. The international administration set up a comprehensive strategy called *Standards before Status* in December 2003 that defined

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<sup>98</sup> Amnesty International, “Prisoners in our Own Homes: Amnesty International’s concerns for the human rights in Kosovo/Kosova”. April 2003. pp:12. Available at: <http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>99</sup> Ibid, pp:10.

<sup>100</sup> Dimitrijević, Nenad and Petra Kovacs. “Managing Hatred and Distrust: The Prognosis for Post-Conflict Settlement in Multiethnic Communities in the Former Yugoslavia”. Part Three: An Imposed Coexistence. Anastasijević, Duška. Good Policies Needed Before Good Practice Can Thrive in Kosovo. *Open Society Institute*. Budapest. 2004. pp:112

<sup>101</sup> International Crisis Group. “Collapse in Kosovo”. ICG Europe Report No.155. 22. April 2004. Priština/Belgrade/Brussels. pp:16. Available at: [http://www.crisisgroup.org/~media/Files/europe/155\\_collapse\\_in\\_kosovo\\_revised.ashx](http://www.crisisgroup.org/~media/Files/europe/155_collapse_in_kosovo_revised.ashx)

eight major areas<sup>102</sup> in which Kosovo must achieve a substantial progress before negotiations about the future status take place.<sup>103</sup> In January 2004, UNMIK's head of justice and police praised the achievements of the international community and the UN in Kosovo as "a good example... [how] to stop ethnic cleansing and build policy instruments that will prevent it from occurring again."<sup>104</sup>

However, less than month and a half later, almost five years after the establishment of the international rule, the major riots targeting mainly Serbs and Roma erupted on the whole territory of Kosovo:

Forty-eight hours of rioting by Kosovo Albanians between March 17 and 18, 2004, involving an estimated 51,000 participants throughout Kosovo, left 19 persons dead, 954 wounded, and 4,100 displaced. At least 730 minority-owned homes, 27 [Serbian] Orthodox churches and monasteries, and 10 public buildings providing services to minorities (including a hospital, two schools, and a post office) were burned and looted. The violence mainly affected Serb, Roma, Ashkali, and other non-Albanian minority communities living in Kosovo, including people who had recently returned to the province, but also had an impact on the Albanian community, nine of whom died during the riots.<sup>105</sup>

The spark that lit the riots was sensationalist and inflammatory reporting of the Albanian-language media that accused Serbs for chasing four Albanian boys into the Ibar River after which three of them drowned. Subsequent investigation of

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<sup>102</sup> I.e. 1. Functioning democratic institutions, 2. Rule of law, 3. Freedom of movement, 4. Sustainable returns and the rights of communities and their members, 5. Economy, 6. Property rights, 7. Dialogue, 8. Kosovo Protection Corps.

<sup>103</sup> "Standards for Kosovo", 10 December 2003, Priština. Available at: [http://www.unmikonline.org/standards/docs/leaflet\\_stand\\_eng.pdf](http://www.unmikonline.org/standards/docs/leaflet_stand_eng.pdf)

<sup>104</sup> Speech Delivered by DSRSG Jean-Christian Cady at the Stockholm International Forum on 28 January 2004. UNMIK Press Office, 28 January 2004. Available at: <http://www.unmikonline.org/press/2004/pressr/pr1112.pdf>

<sup>105</sup> Human Rights Watch. "Not on the Agenda: Failures to Address Accountability in Kosovo Post-March 2004". Volume 18, No.4(D). May 2006. Available at: <http://www.hrw.org/en/reports/2006/05/29/not-agenda>

the accident by UNMIK showed that the boys probably drowned while playing by the river.<sup>106</sup>

### *3.2.1. Reaction of UNMIK, Kfor, and PISG*

The events of the March riots surprised and almost completely paralyzed both the international administration, especially its component in charge of security, and the provisional authorities. Within a few hours and over the course of the next two days, they completely lost control over Kosovo, which entirely plunged into chaos. Even if ineffectiveness of the international administration to protect minorities in the aftermath of the Kosovo war can be partially justified by inexperience and the fact that the structure was yet to be set up on the ground, the March 2004 riots occurred in the fifth year of the international governance of Kosovo. Given the scale, form and results of anti-minority rioting in the two days of March, the reaction of the international administration and the provisional authorities can be defined as a complete and profound failure. Additionally, irresponsible statements made by some of the highest-ranking Kosovo Albanian politicians in the early hours of the riots only fueled the violence and encouraged rioters to carry on with their rampage.

The reasons for the failure of the international forces, Kfor in the first place, to protect lives and property of minorities during the riots can be narrowed down to two – the lack of manpower and unwillingness to react. The first reason is a result of a flawed estimate of Kfor's commanders that security situation is constantly improving, which led to reduction of troops from 50,000 in June 1999 to 18,500 by late 2003, a few months before riots erupted.<sup>107</sup> The second reason – idleness of Kfor troops – is a more significant contributor to devastating consequences of the March violence. Some of the following cases confirm this claim:

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<sup>106</sup> Human Rights Watch. "Failure to Protect: Anti-Minority Violence in Kosovo, March 2004". Volume 16, No.6(D). July 2004. pp:19-20. Available at: <http://www.forumnvo.org.rs/docs/analize/Anti-minority%20violence%20in%20Kosovo.pdf>

<sup>107</sup> Ibid. pp:22.

- “French Kfor troops refused to come to the assistance of the Serb residents of Svinjare, even though their main base is located just a few hundred meters from that village. The entire village of Svinjare—all 137 homes—were burned to the ground within viewing distance of the main French Kfor base;
- In nearby Vučitrn, located in between two main French Kfor camps, Albanian crowds burned sixty-nine Ashkali homes without a response from either French Kfor or international UNMIK police;
- In the southern city of Prizren, German Kfor commanders refused to honor requests to come to the assistance of their international UNMIK police counterparts, and Albanian crowds destroyed all remaining vestiges of the centuries-old Serb presence in the city, including several religious buildings dating back to the fourteenth century, burning one Serb man to death in his home and leaving all remaining Serbs in Prizren homeless;
- In the large town of Kosovo Polje, only a few UNMIK police and no Kfor personnel came to the assistance of the besieged Serbs, leaving a handful of local the KPS officers to protect more than one hundred Serb families scattered around the city. One Serb was beaten to death, and at least one hundred Serb homes were burned, as was the main post office, the Serbian school, the Serbian hospital, and the Serbian Orthodox Church;
- In the capital Priština, Serb residents of the YU Program apartment buildings—an apartment complex originally built to house Serb refugees from Bosnia and Croatia—were besieged for hours by ethnic Albanian crowds who set their apartments on fire and shot at them before they were rescued by Kfor and UNMIK international police.”<sup>108</sup>

The Kosovo Police Service, which overwhelmingly consists of Kosovo Albanians, failed even more drastically to protect minorities during the riots. Except for few cases,<sup>109</sup> they were bystanders while burning, looting or even killings were taking place. In a few

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<sup>108</sup> Human Rights Watch. “Failure to Protect: Anti-Minority Violence in Kosovo, March 2004”. Volume 16, No.6(D). July 2004. pp: 21. Available at: <http://www.forumnvo.org.rs/docs/analize/Anti-minority%20violence%20in%20Kosovo.pdf>

<sup>109</sup> In Prizren, KPS police officers saved few older citizens by safely evacuating them from their homes.

incidents, the KPS members even participated actively in organized violence. A Serb from Obilić, a town located a few kilometers from Priština, witnessed the KPS officers' action during the rioting mob's attack on a Serb neighborhood: "[t]he police were just standing by doing nothing. Later on, the police became actively involved in the demonstrations. I saw the KPS officers bring tires to burn the church and later help destroy homes in the Todorović neighborhood....I saw with my own eyes the KPS officers with the crowd, whatever they could find they threw inside the church and put on fire."<sup>110</sup> Another witness reported seeing a KPS policeman throwing a Molotov cocktail back at the church after it had bounced off the wall.<sup>111</sup> Similar conduct of the KPS officers was reported in Priština, Đakovica, Bijelo Polje, Kosovo Polje, Vučitrn, Svinjare and Lipljan.<sup>112</sup>

The political leadership of Kosovo Albanians, the most senior officials of the provisional authorities, also failed to respond to the situation accordingly. On the contrary, many politicians "initially issued statements that may have helped legitimize the violence in the eyes of many Albanians."<sup>113</sup> The speaker of the Provisional Assembly of Kosovo, Nexat Daci, during a parliamentary session addressing the riots, described the killed and injured Albanians of the fighting on 17 March as "people who died fighting for democracy and freedom."<sup>114</sup> Hashim Thaci, the leader of the Kosovo Democratic Party and the former KLA commander, issued a strong anti-Serb statement: "Serbs are misusing the Albanians' goodwill to create an equal society for all. They don't want to integrate in Kosovar society. Proof of this is yesterday's [children's drowning] and today's [Mitrovica violence] events. Their will has remained in the previous five years only for violence against Albanians. This can no longer be tolerated."<sup>115</sup> Many other statements issued by Kosovo Albanian

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<sup>110</sup> Human Rights Watch. "Failure to Protect: Anti-Minority Violence in Kosovo, March 2004". Volume 16, No.6(D). July 2004. pp: 49. Available at: <http://www.forumnvo.org.rs/docs/analize/Anti-minority%20violence%20in%20Kosovo.pdf>

<sup>111</sup> Ibid.

<sup>112</sup> Ibid. pp:30-53.

<sup>113</sup> Ibid. pp:57.

<sup>114</sup> SEE Security Monitor. "Kosovo's three main parties say independence 'only way out' of crisis". 18 March 2004. Available at: [http://www.csees.net/?page=news&news\\_id=31034&country\\_id=8](http://www.csees.net/?page=news&news_id=31034&country_id=8)

<sup>115</sup> Human Rights Watch. "Failure to Protect: Anti-Minority Violence in Kosovo, March 2004". Volume 16, No.6(D). July 2004. pp: 58. Available at: <http://www.forumnvo.org.rs/docs/analize/Anti-minority%20violence%20in%20Kosovo.pdf>

politicians refused to condemn the violence or even to mention that Serbs are being primarily targeted.

### *3.3. Climate of impunity*

The most crucial reason why minorities in Kosovo have been exposed to a continuous campaign of attacks on life and property since the installment of the international administration is probably the fact that the violence and criminal activities go unchecked and unpunished. The way that Albanian judges handle cases caused a complete loss of trust in Kosovo's judicial system in minority communities, as it is being perceived as deeply partial and biased. Even the international observes identified the problem that led the UN Special Representative to appoint international judges in politically sensitive cases, such as those involving ethnically motivated killings. Finally, the lack of a functional system of witness protection significantly hampers investigations, since those who would be willing to testify are afraid to do so, fearing the retribution from those who committed the crimes. This is especially notable in investigations where witnesses are Albanians and victims are non-Albanians. All these factors created a climate of impunity in which crimes, especially toward minorities, are being easily committed since penalties to counter them are hard to or never reached.<sup>116</sup>

Therefore, some of the most brutal and shocking crimes committed against minorities never received an epilogue in court. The investigation into the killing of 14 Serbian farmers in summer 1999<sup>117</sup> led to an arrest of Mazlum Bitiqi in 2007. He was released two months later due to a lack of evidence. A prominent Kosovo Serb politician Radmila Trajković stated that according to the UNMIK findings, the organizer of this crime is “a high-ranked former member of the KLA, whose arrest would destabilize the

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<sup>116</sup> Dimitrijević, Nenad and Petra Kovacs. “Managing Hatred and Distrust: The Prognosis for Post-Conflict Settlement in Multiethnic Communities in the Former Yugoslavia”. Part Three: An Imposed Coexistence. Anastasijević, Duška. Good Policies Needed Before Good Practice Can Thrive in Kosovo. Open Society Institute. Budapest. 2004. pp:111.

<sup>117</sup> See page 47.

situation in the province”.<sup>118</sup> The suspect accused for shooting the Serb professor on the streets of Priština on the celebration of the Albanian Flag Day in 1999<sup>119</sup> was arrested a month after the murder, but soon escaped from a Kfor detention facility and had not been seen since.<sup>120</sup>

No suspects have been charged for the rocket propelled grenade attack in February 2000 on the convoy of busses carrying 49 Serbs<sup>121</sup> in which two people died.<sup>122</sup> The terrorist-style bombing of the Niš Express convoy near Podujevo<sup>123</sup> also went unpunished. A former KLA member Florim Ejupi was arrested in April 2001 as being the lead suspect in the case, but escaped from American military base Bondsteel a few days later. He was rearrested in Albania in 2004 and additionally charged for the killings of two UNMIK police officers.<sup>124</sup> In 2008 Ejupi was sentenced for 40 years in prison for the bombing, but the verdict was overturned by the panel of international judges in Kosovo in 2009 and he was released.<sup>125</sup>

The investigation of the monstrous killings of two teenagers and wounding four others on the banks of Bistrica River in 2003<sup>126</sup> is terminated, without achieving any results. One of the survivors of the crime received an official reply to his query from the chief of Eulex in 2010, saying that “no known suspects have been identified yet, but in a case new evidence emerge, the investigation will be initiated again.”<sup>127</sup>

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<sup>118</sup> Radio Television of Serbia. “Godišnjica masakra žetelaca na Kosovo” (An anniversary of the harvesters' massacre in Kosovo). Belgrade. 23 Jul 2010. Available at: <http://www.rts.rs/page/stories/sr/story/9/Srbija/741762/Godi%C5%A1njica+masakra+%C5%BEetelaca+na+Kosovu.html>

<sup>119</sup> See page 47.

<sup>120</sup> OSCE, “Fourth Assessment on the Situation of Ethnic Minorities in Kosovo”. *OSCE Mission in Kosovo*. 2000. pp:18. Available at: <http://www.osce.org/kosovo/13308>

<sup>121</sup> See page 48.

<sup>122</sup> UN Security Council. “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo”. 3 March 2000, pp:6. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/325/36/IMG/N0032536.pdf?OpenElement>

<sup>123</sup> See page 49.

<sup>124</sup> Dalje.com. “Kosovo Albanian Gets 40 Years for Serb Bus Bombing”. Zagreb. 6 Jun 2008. Available at: <http://dalje.com/en-world/kosovo-albanian-gets-40-years-for-serb-bus-bombing/154191>

<sup>125</sup> Reuters. “Panel frees Albanian jailed for Kosovo bus bombing”. 13 Mar 2009. Available at: <http://www.reuters.com/article/2009/03/13/idUSBYT332171>

<sup>126</sup> See page 50.

<sup>127</sup> Tanjug. “Eulex obustavio istragu o ubistvu dece u Gorazdevcu” (EULEX halted the investigation of the Gorazdevac children killings). Belgrade. 25 December 2010. Available at: <http://www.kurir-info.rs/vesti/euleks-obustavio-istragu-o-ubistvu-dece-u-gorazdevcu-66536.php>



Generally, the period of two and a half years after the arrival of international mission in Kosovo, the most fatal and violent for Serbs and other minorities, is the period during which “the vast majority of inter-ethnic crimes (...) have resulted neither in identification nor arrest of suspected perpetrators, and most ethnic crimes committed in 1999 and 2000 have not been prosecuted.”<sup>128</sup>

A particular failure of the international administration and the provisional authorities judicial institutions was the processing of the March 2004 riots. Out of 51,000 participants in 33 major riots during the two days of March 2004, only 426 individuals have been accused. Out of these, 56 were considered to be “serious cases” and therefore handed to courts with international judges. Others were to be processed in municipal courts by Kosovo Albanian judges. Only 13 of 56 cases – less than a quarter – had resulted in final decisions, with 29 cases never reaching even pre-trial investigation stage.<sup>129</sup> In 2008, after Kosovo unilaterally declared independence, Eulex took over all cases from the UNMIK Justice Department. By the beginning of 2010, only six cases related to the March violence have been investigated.<sup>130</sup> In March 2011, the Chief prosecutor of Eulex announced he is dropping five cases, confirming the indictment in only one case.<sup>131</sup>

### *3.3.1. Organ harvesting in post-war Kosovo*

In December 2010, the Parliamentary Assembly of the Council of Europe adopted a report that unravels what could be the most horrific unpunished crime committed during the violent break up of Yugoslavia. On behalf of the Committee on Legal Affairs and Human Rights of the Council of Europe, a Swiss MEP Dick Marty compiled a report that

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<sup>128</sup> Human Rights Watch. “Not on the Agenda: Failures to Address Accountability in Kosovo Post-March 2004”. Volume 18, No.4(D). May 2006. pp:20-21. Available at: <http://www.hrw.org/en/reports/2006/05/29/not-agenda>

<sup>129</sup> Human Rights Watch. “Not on the Agenda: Failures to Address Accountability in Kosovo Post-March 2004”. Volume 18, No.4(D). May 2006. pp:25-26. Available at: <http://www.hrw.org/en/reports/2006/05/29/not-agenda>

<sup>130</sup> Eulex. “Annual Report on the Judicial Activities of the EULEX Judges 2009”. 2010. pp:22. Available at: <http://www.Eulex-kosovo.eu/docs/justice/annual-report2009/ANNUAL%20REPORT%20English%20FINAL.pdf>

<sup>131</sup> Glas javnosti. “Euleks: Samo jedna optužnica za 17. mart” (Eulex: Only one indictment for 17 March). Belgrade. 18 March 2011. Available at: <http://www.glas-javnosti.rs/clanak/politika/glas-javnosti-18-03-2011/euleks-samo-jedna-optuznica-za-17-mart>

describes cases of harvesting and trafficking of human organs in the aftermath of the Kosovo war. What is shocking about Marty's report is the establishment of a nexus between organized crime, Kosovo's leadership, and organ trafficking.

In sum, the report finds that throughout the second half of 1999 and first few months of 2000, the KLA abducted over 300 Serb civilians in Kosovo, transported them to three improvised illegal detention centers in Albania, where they were killed and their kidneys, livers and other organs had been harvested in improvised clinics.<sup>132</sup> The report also identifies the Drenica Group, one of the fractions of KLA, as being responsible for the crimes. The head of the group during the time when the crimes were committed was Hashim Thaqi, the former KLA commander and current prime minister of Kosovo.<sup>133</sup> Additionally, Thaqi "reportedly operated with support and complicity not only from Albania's formal governance structures, including the Socialist Government in power at the time, but also from Albania's secret services, and from the formidable Albanian mafia."<sup>134</sup> Marty identified four improvised clinics, all of them in northern Albania, where Serbs were illegally deprived of their organs. The procedures and methodology of organ extraction are thoroughly described:

The testimonies on which we based our findings spoke credibly and consistently of a methodology by which all of the captives were killed, usually by a gunshot to the head, before being operated on to remove one or more of their organs. We learned that this was principally a trade in "cadaver kidneys", i.e. the kidneys were extracted posthumously; it was not a set of advanced surgical procedures requiring controlled clinical conditions and, for example, the extensive use of anesthetic. (...) As and when the transplant surgeons were confirmed to be in position and ready to operate, the captives were brought out of the "safe house" individually, summarily executed by a KLA gunman, and their corpses transported swiftly to the operating clinic. The surgical procedures thereupon performed – cadaver kidney extractions, rather than surgeries on live donors – are the most common means through which

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<sup>132</sup>. Marty, Dick. "Inhuman treatment of people and illicit trafficking in human organs in Kosovo". *Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights*. 12 December 2010. Available at: <http://www.assembly.coe.int/CommitteeDocs/2010/ajdoc462010prov.pdf>

<sup>133</sup> Ibid. pp:14-16.

<sup>134</sup> Ibid. pp:15.

donor organs and tissues are acquired for transplant purposes – except for the criminal method of obtaining the cadavers.<sup>135</sup>

Another astonishing fact Marty's report reveals is that "all of the international community in Kosovo – from the Governments of the United States and other allied Western powers, to the EU-backed justice authorities – undoubtedly possess the same, overwhelming documentation of the full extent of the Drenica Group's crimes, but none seems prepared to react in the face of such a situation and to hold the perpetrators to account."<sup>136</sup> They decided to turn the blind eye on the KLA war crimes, placing a premium on achieving a short-term political stability instead.<sup>137</sup>

If allegations from Dick Marty's report are proven right, the case of organ trafficking will represent a supreme case of impunity in Kosovo. It will disclose extreme failures of the international administration to investigate and prosecute these monstrous crimes and profoundly reassess its sincerity in proclaimed devotion to human rights, justice and reconciliation in Kosovo.

#### *3.4. Freedom of movement: mono-ethnic enclaves and ghettos*

The lack of basic security for members of minority communities directly affected their ability to move freely on the whole territory of Kosovo. Without the escort of Kfor or UNMIK police they were facing a high risk of being attacked physically or verbally, beaten, or even killed, especially in the first two years after the war. This situation forced minorities into a self-imposed isolation in which they were avoiding majority Albanian populated areas, limiting their movement only to those parts of Kosovo where the members of their ethnicity were in either significant numbers or a majority. This led to a creation of mono-ethnic territorial

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<sup>135</sup> Marty, Dick. "Inhuman treatment of people and illicit trafficking in human organs in Kosovo". *Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights*. 12 December 2010. pp: 24-25. Available at: <http://www.assembly.coe.int/CommitteeDocs/2010/ajdoc462010prov.pdf>

<sup>136</sup> Ibid. pp:16

<sup>137</sup> Ibid. pp:7

pockets, so called *enclaves*, which were sometimes as large as few houses or streets.<sup>138</sup> In some cases, in order to protect these enclaves from attacks, Kfor would fence them with barbed wire, turning them into WW2-like ghettos. The ethno-territorial concentration was further boosted after the March 2004 riots, when smaller enclaves were destroyed in onslaughts of Albanian mobs and the population was forced to move to bigger ones.<sup>139</sup> Eventually, it has been shown that minority communities have been able to keep their presence only in those parts of Kosovo where they were able to establish their enclaves.

This particularly applies to Serbs, which comprise almost all enclaves. There are six relatively larger Serbian enclaves, along with several dozens “pockets” of which some have no more than 80 people.<sup>140</sup>

The largest enclave is the Mitrovica region or North Kosovo. It consists of three municipalities – Leposavić, Zvečan, Zubin Potok – and the northern part of the city of Mitrovica, separated from the larger southern part by the Ibar River. The Mitrovica enclave population numbers around 50,000 people and deviates from others because it is directly connected to Serbia from northeast and northwest. The Mitrovica region is the only part of Kosovo that experienced minority population increase since 1999, as many Serbs and Roma relocated here from other areas. Almost the entire Serbian and Roma population of the southern Mitrovica, around 4,500 people, moved across the river to the north during 1999 - 2000 and the March 2004 riots.<sup>141</sup> This enclave is practically multiethnic, with few Albanian-majority villages in the north and so-called Bošnjacka mahala, a mixed neighborhood,

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<sup>138</sup> Kostovicova, Denisa. “European Zones of Human Security: A Proposal for the European Union”. *Center for the Study of Global Governance*. February 2007. pp:4-5. Available at: <http://www.lse.ac.uk/archived/global/Publications/HumanSecurityZonesPaper.pdf>

<sup>139</sup> Baldwin, Clive. “Minority Rights in Kosovo under International Rule”. *Minority Rights Group International*. London. 2006. pp:16. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>140</sup> Kostovicova, Denisa. “European Zones of Human Security: A Proposal for the European Union”. *Center for the Study of Global Governance*. February 2007. pp:4. Available at: <http://www.lse.ac.uk/archived/global/Publications/HumanSecurityZonesPaper.pdf>

<sup>141</sup> OSCE. “OSCE Municipality profile – Mitrovica, Leposavić, Zvečan, Zubin Potok”. OSCE Mission in Kosovo. September 2009. Available at: <http://www.osce.org/kosovo/38678>, <http://www.osce.org/kosovo/13120>, <http://www.osce.org/kosovo/13136>, <http://www.osce.org/kosovo/13135>

inhabited by Albanians, Bosniaks and Serbs. Minority communities of the enclave enjoy relatively higher degree of security and are able to move more freely.<sup>142</sup>

Some 60 percent of Kosovo Serbs, around 70,000 people, live in enclaves south of the Ibar River, which are entirely surrounded by Albanian-majority areas. The southern most enclave is Štrpci, with a population of roughly 15,000. It is actually a multiethnic municipality, with two-thirds Serbian majority and Albanian minority. Both communities established their own institutions, i.e. the municipal government, schools, hospitals, and courts.<sup>143</sup>

The largest Serbian enclave south of the Ibar River is Gračanica, some 10 kilometers away from Priština, built around the medieval Serbian Orthodox monastery of the same name. The enclave has around 25,000 people of which 85 percent are Serbs and 10 percent are Roma.<sup>144</sup> The enclave was officially given the status of a municipality in 2008. Spreading some 10 kilometers in diameter, Gračanica transformed from a village into a focal point for Serbs from central Kosovo, harboring a hospital, schools, and other institutions providing public services. Many Serbs and Roma from Priština have found a refugee here after they were driven out from their homes. Gračanica is considered a safest Serb enclave in Kosovo, apart from the Mitrovica region.<sup>145</sup>

Another significant enclave is in the Gnjilane municipality, which has the population of around 13,000.<sup>146</sup> While Albanians overwhelmingly populate the city

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<sup>142</sup> Kostovicova, Denisa. "European Zones of Human Security: A Proposal for the European Union". *Center for the Study of Global Governance*. February 2007. pp:6. Available at:

<http://www.lse.ac.uk/archived/global/Publications/HumanSecurityZonesPaper.pdf>

<sup>143</sup> Helsinki committee for Human Rights in Serbia. "A forgotten World – The Serb Enclaves in Kosovo". 26 May 2008. pp:1, 8. Available at: <http://www.globalaging.org/armedconflict/Trinity%20story.pdf>

<sup>144</sup> Gračanica. "Veb prezentacija opštine Gračanica" (The Web presentation of the Municipality of Gračanica). 2011. Available at: [http://www.opstina-Gracanica.com/index.php?option=com\\_content&view=article&id=137&Itemid=56](http://www.opstina-Gracanica.com/index.php?option=com_content&view=article&id=137&Itemid=56)

<sup>145</sup> B92. „B92 looks at life in K. Serb enclaves“. 13 October 2008. Available at:

[http://www.b92.net/eng/news/society-article.php?yyyy=2008&mm=10&dd=13&nav\\_id=54203](http://www.b92.net/eng/news/society-article.php?yyyy=2008&mm=10&dd=13&nav_id=54203)

<sup>146</sup> OSCE. "OSCE Municipality Overview – Gnjilane". OSCE Mission in Kosovo. September 2009. Available at: <http://www.osce.org/kosovo/13113>

of Gnjilane, Serbs are concentrated in dozen of villages in the municipality. The contact between two communities is virtually non-existent.<sup>147</sup>

The enclave Lipljan located in the Priština region is the home to some 10,000 Serbs, who live in six mono-ethnic and 13 ethnically mixed villages.<sup>148</sup> The same is the size of the Kosovska Kamenica enclave in eastern Kosovo. From the part of this enclave, the new municipality Ranilug was created in 2008, encompassing some 5,000 Serbs and 1,000 Roma.<sup>149</sup>

As already mentioned above, Serbs and other minorities are confined to free movement only within the enclaves, while the rest of Kosovo remains virtually inaccessible to them. This also refers to basic social services, such as health and schooling, since most of the enclaves are rural and do not poses sufficient infrastructure. Therefore, members of minority communities are often forced to travel from smaller to bigger enclaves to acquire medical treatment or to study. In addition, displaced members of minority communities, who moved to larger enclaves, somewhere in Serbia or elsewhere in the region, often visit their houses they fled or graveyards of their relatives.

In order to improve communication between enclaves, UNMIK established the so-called Humanitarian Bus Transportation (HBT) service in 1999. HBT is the system of bus lines connecting Serbian enclaves, mainly smaller with bigger ones such as Mitrovica, Gračanica and Štrpce. In the beginning of international rule, these buses were operating only on scheduled days and were moving in convoys under the heavy-weapon Kfor escort. While passing through Albanian majority areas the buses were regularly thrown stones at. In some cases, they were attacked

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<sup>147</sup> Kostovicova, Denisa. "European Zones of Human Security: A Proposal for the European Union". *Center for the Study of Global Governance*. February 2007. pp:4. Available at:

<http://www.lse.ac.uk/archived/global/Publications/HumanSecurityZonesPaper.pdf>

<sup>148</sup> OSCE. "OSCE Community Profile – Lipljan". *OSCE Mission in Kosovo*. September 2009. Available at: <http://www.osce.org/kosovo/13121>

<sup>149</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:275. Available at: <http://www.osce.org/kosovo/75450>

by firearms, which resulted in fatalities. As of 2008, there were a total of 17 routes of HBT.<sup>150</sup>

In 2007, management and funding of HBT was transferred from UNMIK to the provisional authorities; the Ministry of Transport and Communications and Ministry of Communities and Returns, in particular. The buses are now operating on almost daily basis and without military or police escort, though they are commonly exposed to stoning and verbal attacks by Albanian schoolchildren.<sup>151</sup> As the number of users, security and quality of service are steadily rising over the years, HBT is scheduled to be fully entrusted to commercial bus companies from Serbian enclaves in Kosovo.<sup>152</sup>

The HBT scheme is considered to be one of the successes of the international administration and the provisional authorities in improving the freedom of movement of minorities.<sup>153</sup> However, it is questionable if a segregated bus transportation system, inability to freely access commercial means of transportation and to individually move on the whole territory of Kosovo without security concerns can be considered as a full exercise of freedom of movement as in other parts of Europe.

### *3.5. Current security situation and freedom of movement*

The period after the March 2004 riots saw a steady improvement of security and freedom of movement for minorities in Kosovo. The factors of increased pressure of the international community on the provisional authorities and the beginning of the final status negotiations contributed the most to these developments. Immediately after the riots, the

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<sup>150</sup> OSCE & UNMIK. "Humanitarian Minority Bus Transportation in Kosovo after Transfer to Kosovo Institutions: Monitory Findings". *OSCE Mission in Kosovo*. Report No.4. June 2008. pp:9. Available at: <http://www.osce.org/kosovo/32854>

<sup>151</sup> Lellio, Anna Di. "Freedom of Movement Report". *UNDP*. Priština 2009. pp:12, 14. Available at: [http://www.ks.undp.org/repository/docs/Freedom\\_MovementKOSSAC.pdf](http://www.ks.undp.org/repository/docs/Freedom_MovementKOSSAC.pdf)

<sup>152</sup> OSCE & UNMIK. "Humanitarian Minority Bus Transportation in Kosovo after Transfer to Kosovo Institutions: Monitory Findings". *OSCE Mission in Kosovo*. Report No.4. June 2008. pp:2, 8. Available at: <http://www.osce.org/kosovo/32854>

<sup>153</sup> Lellio, Anna Di. "Freedom of Movement Report". *UNDP*. Priština 2009. pp:12, 14. Available at: [http://www.ks.undp.org/repository/docs/Freedom\\_MovementKOSSAC.pdf](http://www.ks.undp.org/repository/docs/Freedom_MovementKOSSAC.pdf)

international community via the international administration put substantial pressure on the Kosovo Albanian leadership, clearly pointing out that Kosovo's path toward self-governance could be jeopardized and reversed if organized violence against minorities reoccurs. At the same time, the preparations for the final solution settlement were initiated, whose anticipation in the previous years is considered to be a generating factor of frustration among the Albanian majority and which was subsequently channeled through violence against minority communities.<sup>154</sup>

These trends were reflected by the situation on the ground. The rate of attacks on minority communities saw decline over the years. There were no major murders or beatings, though these incidents did happen occasionally. The overall improvement of the security situation in the period was a result of increased capability of Kfor and UNMIK police to prevent violent attacks, increased efficiency and professionalism of the KPS, and physical separation of the Albanian and minority populations.

Currently, all minority communities in Kosovo enjoy a relatively high level of security, except for Serbs and Roma. These two communities are still subjected to violence by Kosovo Albanians. The forms of violence are attacks on returnees and their property, attacks on religious sites and graveyards, verbal attacks and other forms of harassment. In August 2009, an elderly Serbian couple was murdered in their home in Parteš, the Gnjilane region. Since there were no signs of robbery, the killing was probably ethnically motivated.<sup>155</sup> In April 2010, Serb returnees in the village Žač, municipality Istok, were consecutively stoned for few nights. The 26 families set up tents near their destroyed houses, planning to rebuild them and move in again.<sup>156</sup> In April 2011, a landmine was deactivated in a graveyard in the village Staro Gracko, the municipality of Lipljan. The landmine was probably planted there few days before Easter, when displaced Serbs from

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<sup>154</sup> Lellio, Anna Di. "Freedom of Movement Report". *UNDP*. Priština 2009. pp:14. Available at: [http://www.ks.undp.org/repository/docs/Freedom\\_MovementKOSSAC.pdf](http://www.ks.undp.org/repository/docs/Freedom_MovementKOSSAC.pdf)

<sup>155</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:234. Available at: <http://www.osce.org/kosovo/75450>

<sup>156</sup> Tanjug. "UNMIK condemns attack on Serbs in Žač". 24 April 2010. New York. Available at: <http://www.eparhija-prizren.com/en/media/tanjug-unmik-condemns-attacks-serbs-zac>



the village annually visit graves of their late family members. The bodies of 14 Serb harvesters killed in 1999 are buried at this graveyard.<sup>157</sup>

These are only some of the anti-minority cases of violence that still occur on a daily basis throughout Kosovo. In the first eight months of 2009, there have been 275 inter-ethnic incidents.<sup>158</sup> Despite the fact that they are not nearly as deadly and brutal as those committed in the first five years of the international rule, they still pose security issues for Serbs and Roma and are hampering the process of return and freedom of movement.

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<sup>157</sup> Vijesti. "Landmine planted in an orthodox graveyard in Kosovo" (Na pravoslavnom groblju na Kosovo postavljena mina). 25 April 2011. Available at: <http://www.vijesti.me/svijet/na-pravoslavnom-groblju-kosovu-postavljena-nagazna-mina-clanak-17081>

<sup>158</sup> Human Rights Watch. "World Report 2010". *Human Rights Watch*. 2010. Available at: <http://www.hrw.org/world-report-2010>

## 4. DISPLACED, RETURN AND PROPERTY RIGHTS

***“All refugees and displaced persons who wish to return to Kosovo must be able to do so in safety and dignity”***

*- Standards for Kosovo, IV. Sustainable Return and the Rights of Communities and their members*

***“...the main responsibilities of the international civil presence will include:  
...Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo”***

*- Security Council Resolution 1244, Paragraph 11, Subparagraph (k)*

***“No one shall be arbitrarily deprived of his property”***

*- Universal Declaration of Human Rights, Article 17*

Expulsions, displacements and ethnic cleansing of Kosovo Albanians were among the most important reasons for NATO to initiate a military campaign against Serbia. Therefore, the primary initial tasks of the international administration upon its installment in Kosovo was to establish secure environment and enable sustainable return of all displaced persons and refugees. Subsequently, the provisional authorities were also included in the process.

This chapter will examine the problem of refugees and internally displaced persons from minority communities and the process of their return to Kosovo after the war. It will look into the two crucial periods – the second half of 1999 and the March 2004 riots - when most of the displacements happened. Strategies and policies, institutional structure and concrete actions of both the international administration and the provisional authorities related to return and property rights will be described and evaluated. Finally, the problem of property rights, characteristic for Kosovo as being one of the major obstacles to effective return, will be analyzed as well.

#### 4.1. Post-June 1999 and the March 2004 riots displacements

During the Kosovo conflict and especially during its last three months, when the intensity of violence was peaking, some 800,000 Albanians left their homes and became internally displaced, while around 500,000 went to cross-border refugee camps in Albania and Macedonia. After the hostilities ceased, almost all of them spontaneously returned to their homes over the course of a few weeks.<sup>159</sup>

As Albanians were pouring into Kosovo from Albania and Macedonia, Serbs and Roma were moving in the opposite direction – out of Kosovo. By October 1999, there were 234,000 Serb and Roma IDPs from Kosovo in Serbia and Montenegro.<sup>160</sup> While the initial wave of departures was prompted by concerns of possible retribution by the KLA, which was still effective on the ground, the second wave was caused by the surge in violent attacks committed by Kosovo Albanians as described in the previous chapter. It was an obvious widespread campaign of violence directed against minorities with a sole objective to force them out of a particular part or the whole territory of Kosovo.<sup>161</sup>

This meant that Kosovo was practically experiencing another ethnic cleansing, this time directed against Serbs and other minorities. During the period, most of urban areas and certain rural parts of Kosovo were completely cleansed of Serbs and Roma. Not counting the three northern predominantly Serb municipalities; there were 437 settlements inhabited by Serbs prior to June 1999 of which 312 have been completely ethnically cleansed.<sup>162</sup> The capital Priština had a population of around 600,000 prior to the NATO

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<sup>159</sup> UN. “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo”. *Security Council*. 12 July 1999. pp:3. Available at: <http://www.unmikonline.org/UNMIKONLINE2009/misc/docs/sc-reports/S-1999-779.pdf>

<sup>160</sup> Baldwin, Clive. “Minority Rights in Kosovo under International Rule”. *Minority Rights Group International*. London. 2006. pp:13. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>161</sup> UN. “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo”. *Security Council*. 12 July 1999. pp:2. Available at: <http://www.unmikonline.org/UNMIKONLINE2009/misc/docs/sc-reports/S-1999-779.pdf>

<sup>162</sup> Government of Serbia. “Strategy for substantial existence and return to Kosovo and Metohija” (Strategija održivog opstanka i povratka na Kosovo i Metohiju). *Ministry for Kosovo and Metohija*. March 2009. pp:6. Available at: <http://www.infocentar.libergraf.rs/documents/Strategija%20odrzivog%20opstanka%20i%20povratka%20na%20KIM.pdf>

bombing of which 20,000 were Serbs. By the end of August 1999, fewer than 2,000 Serbs remained in the city.<sup>163</sup> This number shrunk to a few dozen after the March 2004 riots. As of 2009, there are no Serbs in Kosovo's capital.

The southern city of Prizren was completely cleansed of Serbs within a few weeks in the summer of 1999. The pre-war Serbian population of 10,000 was reduced to 254 in January 2000. These were mainly older Serbs who could not leave because they did not have any relatives or family in Serbia or elsewhere. They were predominantly confined to their houses and guarded by Kfor round the clock. The Bosniak population was also reduced from 38,500 in 1998 to 22,000 in March 2001.<sup>164</sup> The number of Serbs in the municipality of Gnjilane dropped from 20,000 in 1998 to less over 12,000 in 2003. Almost the entire urban Serb population of the city of Gnjilane moved to Serb majority villages in the municipality. In the same period, the Roma population was reduced tenfold, from 3,560 to 350.<sup>165</sup> In the pre-war municipality of Đakovica there were around 3,000 Serbs, concentrated mainly in the urban municipality center. By the end of 1999, the town was emptied of Serbs.<sup>166</sup>

The most affected ethnic minority by the ethnic cleansing that occurred immediately after the arrival of the international administration were RAE communities. Out of the estimated pre-war population of 120,000 Roma, Ashkali and Egyptians, Kosovo Albanians expelled four fifths of them during the summer and autumn of 1999. This was described as “the single biggest catastrophe to befall the Romani community since World War 2.”<sup>167</sup> Most of the displacements happened within the Serb-speaking Roma community. Albanian-speaking Ashkali and Egyptians who are socially better integrated in

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<sup>163</sup> UNHCR, “Fourth assessment of the Situation of Ethnic Minorities in Kosovo”. *UNHCR in Kosovo*. 11. February 2000. Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3c3c18cf2&query=kosovo>

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> OSCE. “Municipal profile of Đakovica”. *OSCE Mission in Kosovo*. April 2008. Available at: <http://www.osce.org/kosovo/13111>

<sup>167</sup> European Roma Rights Center. “Written Comments of the European Roma Rights Center Concerning Kosovo for the Consideration by the United Nations Human Rights Committee”. *ERRC*. 20 February 2006. pp:4. Budapest. Available at: <http://www.errc.org/cikk.php?cikk=2531>

predominantly Albanian populated areas were mainly spared, although did experienced a certain level of persecution as well and as a result had to leave their homes.<sup>168</sup>

The particularly brutal case of displacement of Roma was the expulsion of the entire Roma community from the southern, Albanian-dominated part of Mitrovica. Roma lived there in a semi-autonomous enclave known as the *Mahalla*. Mahallas are a typical form of Roma existence in urban settlements, not only in Kosovo but also throughout the Balkans. They are usually areas on the outskirts of cities and towns, located on municipality-owned land or land of no clear ownership, excluded from municipal services and lacking basic infrastructure.<sup>169</sup> Before the conflict, there were around 8,000 Roma living in the Mitrovica Mahalla, making it the single largest Roma settlement in whole of Kosovo. In the aftermath of the war, residents of the Roma district were constantly attacked, harassed and their homes were damaged or set on fire. The entire population of the Mahalla fled within few weeks, looking for security in the Serb-controlled part of the city north of the Ibar River. The Albanian crowds subsequently entered the Mahalla, looting, pillaging, and completely destroying over 750 houses.<sup>170</sup>

Second wave of forceful expulsions and displacements of minorities occurred during the March 2004 riots. During the period of two days, 17-18 March, over 4,100 Serbs, Roma and Ashkali were forced out of their homes. Over 550 minority homes, 10 facilities providing social services and 27 Serbian Orthodox churches were burned or destroyed. While the March 2004 riots did not result in such a huge number of displacements as the post-June 1999 period, it is the most concentrated series of violent incidents with the clear intention of those who staged it to completely ethnically cleanse

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<sup>168</sup> European Roma Rights Center. "Written Comments of the European Roma Rights Center Concerning Kosovo for the Consideration by the United Nations Human Rights Committee". *ERRC*. 20 February 2006. pp:4. Budapest. Available at: <http://www.errc.org/cikk.php?cikk=2531>

<sup>169</sup> UN Committee on Economic Social and Cultural Rights. "Property Return and Restitution: Kosovo". *Center of Housing Rights and Evictions*. 31 March 2008. pp:4. Available at: <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/COHREUNMIK.pdf>

<sup>170</sup> Human Rights Watch. "Poisoned by Lead. A Health and Human Rights Crisis in Mitrovica's Roma Camps". *Human Rights Watch*. New York. 23 June 2009. pp:26. Available at: <http://www.hrw.org/node/83942>

certain areas of Kosovo populated by minority communities, which in most of the cases did happen.<sup>171</sup>

The target of attacks were primarily Serbian populated areas; enclaves and pockets in the urban settlements. Some of them were completely wiped out in onslaughts of Albanian mobs; the population forced to leave within few minutes. The worst affected minority settlement was the Serbian enclave Svinjare, located a few kilometers south of Mitrovica. All 137 Serb houses were burned to the ground and the entire population of around 500 was evacuated by Kfor without having enough time to collect even the most basic of possessions. The other example of total destruction and ethnic cleansing is Kosovo Polje, a town ten kilometers away from Priština. Unlike most of the other parts in Kosovo where minorities moved and isolated themselves in mono-ethnic enclaves, Serbs in Kosovo Polje were living alongside their Albanian neighbors. After the riots, the result was a complete destruction; all 600 Serbs were expelled, every single of 100 Serb houses was burned and destroyed, including the Orthodox church, post office and a hospital. Other major cities completely cleansed of Serbs included the capital Priština, where few dozens remaining Serb families living in one apartment building were barely evacuated on time and saved by Kfor, and western town Đakovica, where five remaining older Serbian women were first evacuated to a local Orthodox church and then had to be taken to Kfor's military base because soldiers could not defend them from the mob.<sup>172</sup>

In regards to the other minority communities besides Serbs, the severely affected were Ashkali in the Vučitrn municipality. The community was numbering around 350 families. During the riots almost all of them were expelled. Because of the involvement in butcher trade and remittances they receive from relatives working abroad, Ashkali in Vučitrn accumulated substantial wealth and built large houses. They were looted and over 70 of them were set alight and destroyed.<sup>173</sup>

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<sup>171</sup> Human Rights Watch. "Failure to Protect: Anti-Minority Violence in Kosovo, March 2004". Volume 16, No.6(D). July 2004. pp:2-3. Available at: <http://www.forumnvo.org.rs/docs/analize/Anti-minority%20violence%20in%20Kosovo.pdf>

<sup>172</sup> Ibid. 52-57

<sup>173</sup> Ibid. pp:38.

The major problem for Kosovo's displaced minorities is the lack of appropriate housing, which, if it is present for a longer time, can lead to poverty and social exclusion. Most of the displaced settled in temporary-built shelters or containers but remained to live there for over a decade. These settlements are often erected on outskirts of cities, without appropriate infrastructure such as electricity, sewage or paved roads. Two minority IDP camp clusters in Kosovo exemplify severe hardships that people who are unable to return to their homes are experiencing – the Roma camps in the northern Mitrovica and the Serb camp in Štrpce.

The Mitrovica Roma camp, which is comprised of the camps Česmin Lug and Osterode located next to each other, was established immediately after the war in Kosovo ended. The entire Roma population of 8,000 moved from the Mahalla in the southern Albanian-majority part of the city to mainly Serbian populated part in the north. As described earlier, the Mahalla was looted and entirely destroyed. The Roma camp in Mitrovica is located on the ground close to the largest industrial facility in Kosovo, the Trepča mine complex. The cluster of Trepča mines was established in 1926 and has been used for extraction of lead, zinc, cadmium, silver and gold. Field research in the 1970s and 1980s showed very high levels of lead in the water, soil, and air in Mitrovica. However, Trepča continued to operate until the beginning of the war.<sup>174</sup>

The camps Česmin Lug and Osterode have “the worst living conditions”<sup>175</sup> where “the inhabitants live in small shacks made of wood, some of them isolated with cardboard lining”<sup>176</sup>, without running water. The blood tests of Roma children performed by Serbian and international doctors in 2002 showed the presence of unacceptably high levels of lead. The tests were afterwards also performed on adults and indicated that the whole Roma community in these two camps has been permanently poisoned by lead from the contaminated soil and water. The poisoning caused higher rate of kidney failures, high blood pressure, diabetes, rheumatism, asthma, and heart problems.<sup>177</sup> In spite of the case

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<sup>174</sup> Human Rights Watch. “Poisoned by Lead. A Health and Human Rights Crisis in Mitrovica’s Roma Camps”. *Human Rights Watch*. New York. 23 June 2009. pp:22. Available at: <http://www.hrw.org/node/83942>

<sup>175</sup> Ibid. pp:40.

<sup>176</sup> Ibid. pp:40.

<sup>177</sup> Ibid. pp:41.

being highly publicized by international human rights watchdogs and some European institutions, around 1,000 Roma still continue to live in these two camps.<sup>178</sup>

In the municipality of Štrpce there are over 700 displaced Serbs from mainly southern and western parts of Kosovo. The majority of them managed to accommodate either in socially owned weekend houses or with relatives. However, there are still 250 persons living in five collective refugee centers. Living conditions in these centers are generally bad and under the acceptable level. It is a usual situation for eight families to share one bathroom. Overwhelming majority of the population is unemployed and the only income they have is social support benefits paid by Serbia.<sup>179</sup> Dozens of similar collective centers, camps, and improvised residences across Kosovo and the region are hosting thousands of displaced Serbs, Roma, Ashkali and others who are waiting for over a decade to return to their homes.

#### *4.1.1. Reaction of Kfor and UNMIK*

The initial reason for minorities to leave Kosovo in the aftermath of the war was the fear of the lack of security. Those who did not leave immediately, soon realized they have to do so as the fears of those who already left became reality. The most striking fact is that the international forces – Kfor and the UNMIK police – have not done anything or very little to prevent this massive outflow of the minority population by providing them with the minimal level of security. This applies to both the post-June 1999 and the March 2004 riots period. In the first case, the international forces did not show any decisive action to demonstrate that ethnic cleansing will not be tolerated. All they did was provide escorts for long queues of now-refugees leaving their homes and Kosovo or to protect those minority-inhabited areas by establishing static checkpoints. It was clear that Kfor was geared to deal with external threats, i.e. possible invasion by Serbian forces, but not internal threats, such

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<sup>178</sup> Human Rights Watch. “Poisoned by Lead. A Health and Human Rights Crisis in Mitrovica’s Roma Camps”. *Human Rights Watch*. New York. 23 June 2009. pp:22. Available at: <http://www.hrw.org/node/83942>

<sup>179</sup> OSCE. “In Pursuit of Durable Solutions for those Displaced in Collective Centers in Štrpce Municipality”. *OSCE Mission in Kosovo, Department of Human Rights and Communities*. March 2010. pp:2-4. Available at: [http://www.ecoi.net/file\\_upload/1002\\_1270917132\\_kosovo.pdf](http://www.ecoi.net/file_upload/1002_1270917132_kosovo.pdf)



as anti-minority violence and extensive ethnic cleansing. Furthermore, despite substantial evidence that former members of KLA were mostly responsible for the killings and expulsions of minorities, the international administration practically turned a blind eye and co-opted them into administrative and security structures of the provisional authorities.<sup>180</sup>

The failure of the international security forces to protect minorities from another wave of ethnic cleansing during the March 2004 was even more visible when the near-collapse of the security structure occurred. Kfor and the UNMIK police were once again, now barely on time, only able to unwillingly evacuate Serbs and other minorities from their homes, leaving their homes to be looted and destroyed in ablaze. As seen before, Kfor was not willing to respond with an appropriate force that would diminish or completely prevent results of the March anti-minority violence.<sup>181</sup>

#### 4.2. *Process of return and return policies*

As of 2010, there have been 224,000 refugees from Kosovo residing in the regional countries; in Serbia – over 205,000, in Montenegro – over 16,000, and in Macedonia – 1,500.<sup>182</sup> In addition, there are around 18,000 IDPs in Kosovo, of which 11,000 are members of minority communities.<sup>183</sup> Considering that all refugees from Kosovo residing in the regional countries are non-Albanians, the number of minority communities members who currently do not live in the original place of their residence in Kosovo tops 235,000. Some 200,000 of them are Kosovo Serbs, with rest of it being Roma and Ashkali.<sup>184</sup>

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<sup>180</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. pp:14-15. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>181</sup> Human Rights Watch. "Failure to Protect: Anti-Minority Violence in Kosovo, March 2004". Volume 16, No.6(D). July 2004. pp:30-33, 34-42, 20-26. Available at: <http://www.forumnvo.org.rs/docs/analize/Anti-minority%20violence%20in%20Kosovo.pdf>

<sup>182</sup> UNHCR. "Estimate of refugees and displaced persons still seeking solutions in South-Eastern Europe". *UNHCR*. 26 January 2010. Available at: [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/37D1329DCA480972C12577260038185D/\\$file/SE\\_E\\_EstimateOfRefIDPs\\_Map\\_A3LC\\_31-12-2009.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/37D1329DCA480972C12577260038185D/$file/SE_E_EstimateOfRefIDPs_Map_A3LC_31-12-2009.pdf)

<sup>183</sup> U.S. Department of State. "2010 Reports on Human Rights Practices". *Bureau of Democracy, Human Rights and Labor*. 8 April 2011. pp:22. Available at: <http://www.state.gov/documents/organization/160196.pdf>

<sup>184</sup> OSCE. "Kosovo Communities Profiles". OSCE Mission in Kosovo. *OSCE Mission in Kosovo*. 2010. pp:241. Available at: <http://www.osce.org/kosovo/75450>

Most of these displacements took place within the first year of international administration in Kosovo, when intensity of anti-minority violence was peaking. Due to the fact that the international community proclaimed safe and unobstructed return of all displaced persons to be the key goal of its mission in Kosovo and spent tens of millions of Euros trying to achieve this, one can claim that this has been fully achieved only in respect to displaced Kosovo Albanians. As of the minority communities, especially Kosovo Serbs, the return process statistics show that the over a decade-long process has been a complete failure. In the period 2000-2010, only 21,000 or eight percent of persons belonging to minority communities voluntarily returned to their homes from internal and external displacement within the region.<sup>185</sup> The return rate is even worse for the largest minority community, Serbs, of which 200,000 fled Kosovo, only 8,656 or 4.3 percent voluntarily returned.<sup>186</sup> The major reason for this situation is a “lack of employment and socio-economic opportunities, limited access to public services, unresolved housing and property rights issues and, to some extent, security concerns and limited freedom of movement.”<sup>187</sup>

The process of return, creation, and implementation of return policies in Kosovo were exclusive competences of the international administration in the early years of its presence on the ground. Kfor and to lesser extent the UNMIK police were to create the most important initial factor of return – a secure and safe environment. As seen from above, international forces drastically failed to do so. To make things grimmer, it was not only their inability to prevent major displacements and expulsions but also their occasional direct hampering and blocking of the return efforts of minorities. Instead of putting the core problem – anti-minority violence – under control, Kfor developed an approach trying to control the process of return, directly violating the right of displaced persons to return to their homes.

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<sup>185</sup> OSCE. “Municipal responses to displacement and returns in Kosovo”. *OSCE Mission in Kosovo*, Department of Human Rights and Communities. November 2010. pp:2. Available at: <http://www.osce.org/kosovo/73854>

<sup>186</sup> OSCE. “Kosovo Communities Profiles. OSCE Mission in Kosovo”. *OSCE Mission in Kosovo*. 2010. pp:241. Available at: <http://www.osce.org/kosovo/75450>

<sup>187</sup> OSCE. “Municipal responses to displacement and returns in Kosovo”. *OSCE Mission in Kosovo*, Department of Human Rights and Communities. November 2010. pp:2. Available at: <http://www.osce.org/kosovo/73854>

The most notorious case that credibly depicts this approach is a policy exercised by the German component of Kfor. In the period 2000-2001, in the southern and western parts of Kosovo, Kfor directly blocked the return process by claiming it cannot take place until a satisfactory level of security is achieved. The German Kfor often defined the return as being “premature”, which would most likely lead to disturbances. Instead of dealing with disturbances itself, Kfor established checkpoints around the Serb areas preventing anyone “unauthorized” of entering them. This also applied to Serbs who fled these areas but were willing and courageous enough to return. Their efforts were often blocked by Kfor administration, which did not want to issue passing permits.<sup>188</sup>

The civilian administration in Kosovo, UNMIK, was involved in the process of return from the aspects of coordination, capacity building and funding. It started to shape the return systematically and structurally in 2002 by issuing a policy document titled the *Rights to Sustainable Return*. One year later, in order to turn the documented principles into practical procedures for planning and managing the return process, the *Manual for Sustainable Return* was developed. The Manual stipulated “international standards regarding the rights IDPs, the corresponding policy framework in Kosovo, the institutional roles and responsibilities of the various stakeholders, and the operational procedures and mechanisms for managing the process of organized and individual minority return.”<sup>189</sup> The success of UNMIK’s return policies was directly tied to those of Kfor’s. Without security for minorities and their subsequent steady return, there was no one that the policies could be applied to. That is why the creation of the first return strategy happened three years after the international administration was established and why the timing corresponds with the decrease of anti-minority violence.

Simultaneously, UNMIK was developing and empowering local capacities to deal with the return. The provisional authorities got involved already in 2003, when they co-authored the Manual in the role of an advisor. In 2004, the position of the *Municipal Return*

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<sup>188</sup> Baldwin, Clive. “Minority Rights in Kosovo under International Rule”. Minority Rights Group International. London. 2006. pp:15. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>189</sup> OSCE. “Planning and implementation of the municipal return strategy in the Kosovo municipalities”. *OSCE Mission in Kosovo, Department of Human Rights, Decentralization and Communities*. May-June 2007. pp:4. Available at: <http://www.osce.org/kosovo/28376>

*Officer* was created and recruitments were taking place through a joint UNMIK-PISG procedure. The same year, the *Municipal Strategy Returns Policy Paper* was developed in order to specify procedures and instruments of return on a municipal level. In 2005, the Ministry of Communities and Return within the provisional government was established with the mandate to “monitor and support municipal efforts to address community issues and returns, including the work of Mediation Committees, Communities Committees, Municipal Community Offices, and the development and implementation of Municipal Returns Strategies.”<sup>190</sup> Finally, in 2006, the Manual was updated and amended in order to address newly created institutional framework and to correct mistakes which were proved in practice.<sup>191</sup> After the Kosovo unilateral declaration of independence, the return process was almost completely entrusted to the provisional authorities, with the international administration’s role downgraded to reporting, overseeing and consulting on the process.

The return process reflected from the standpoint of provisional authorities showed big discrepancies between what has been proclaimed and what has been done in reality. While not lacking strategies, policies and legislation concerning the return of minorities, the provisional authorities showed incapable of implementing these on the ground. The main reasons for this was the lack of political will or commitment to return, the lack of financial resources, the lack of capacity for project implementation, and the lack of coordination between municipality and central levels of government. Currently, the provisional authorities support and advocate return only to the extent to which they are forced to do so. The situation is especially present where it influences return the most, on the municipal level, where chiefly only one person, the Municipal Return Officers, makes efforts concerning the issue. Another problem is that most municipalities do not have strictly defined funds within the budget aimed at supporting return. Even if money is allocated from the international administration funds or those from the central provisional government in Priština, the lack of transparency and responsibility by municipal authorities causes the funds for return to be redirected and spent to something else. Moreover, the

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<sup>190</sup> OSCE. “Planning and implementation of the municipal return strategy in the Kosovo municipalities”. *OSCE Mission in Kosovo, Department of Human Rights, Decentralization and Communities*. May-June 2007. pp:4. Available at: <http://www.osce.org/kosovo/28376>

<sup>191</sup> Ibid. pp:5.

representatives of minority communities are very often misrepresented in municipal councils. This leads to the creation of return policies that do not answer needs of potential returnees, as there is no input into the process from their side. Overall, the provisional authorities did recognize the issue of minority return as a crucial one, but still have not done much to address it in the manner that will produce substantial positive results.<sup>192</sup>

#### 4.3. Property rights

Alongside with security, property rights are the most pressing problem blocking the return. Upon the establishment of the international administration and massive ethnic cleansing of minorities that ensued, a vast number of properties, including private, commercial and agricultural land, remained unprotected, and subsequently illegally seized and usurped.<sup>193</sup> To address this problem, UNMIK established the Housing and Property Directorate (HPD) under its auspices. The HPD was tasked to receive and rule on requests about usurped properties; almost all requests were submitted by displaced minorities. In 2006, UNMIK shut down the HPD and transferred its competences to the provisional authorities by creating the Kosovo Property Agency (KPA).<sup>194</sup>

The violation of property rights of minorities in Kosovo appears in three forms. The first one is illegal occupation of properties owned by members of minority communities. This mainly happens in the cities. The second form is destruction of homes owned by minorities, often followed by illegal construction on the site. Finally, attempts to drive minorities out of their homes and to gain ownership over them are often done through forced sales, which are achieved by constant harassments and intimidation.<sup>195</sup>

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<sup>192</sup> OSCE, "Municipal responses to displacement and returns in Kosovo". *OSCE Mission in Kosovo, Department of Human Rights and Communities*. November 2010. pp:19-22. Available at: <http://www.osce.org/kosovo/73854>

<sup>193</sup> Ibid. pp:22.

<sup>194</sup> Movement for Peace, PSIG, OSCE. "You are displaced, your rights are not. Conference on Sustainable Property Restitution and Solutions to Displacement in Kosovo During Transition, Final Conference Document and Recommendations". 26-27 November 2007. Priština. pp:4. Available at: <http://www.osce.org/kosovo/30782>

<sup>195</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. pp:18. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

While other minorities have more or less unrestricted access to their properties, the RAE and Serb communities face huge problems in doing so. This particularly refers to Roma whose attempts to repossess their properties are hampered by “the lack of adequate documentation, destruction during the conflict of documents proving ownership rights, the frequent malfunctioning of municipal cadastral offices, and overall misconception amongst the community about property rights.”<sup>196</sup> For example, the problem is most acute in the Gnjilane region where only 10 percent of Roma enjoy their property rights, while rest of them are still waiting for the KPA and municipal courts to rule on their requests.<sup>197</sup>

The usurpation of Kosovo Serb properties is widespread in all areas south of the Ibar River, especially in those areas where no Serbs are left. There is no accurate data but it is certain that Kosovo Albanians currently illegally occupy thousands of Serb-owned houses and apartments. Additionally, over one million of cadastre units (arable land, pastures and forests) owned by Kosovo Serbs and worth over 50 USD billion are being usurped.<sup>198</sup>

Those whose property has been destroyed are experiencing the issue of slow or no reconstruction at all. Despite the fact that both the international administration and the provisional authorities are funding the reconstruction, these funds are either misused or insufficient. This was particularly present during the HPD existence when 10 percent of funds granted from UNMIK to municipalities were devoted to minority communities. However, in 2000 and 2001, minorities received only two and four percent of these funds, respectively.<sup>199</sup> Another problem is that minorities who submit their requests asking for reconstruction often wait for years until their homes are rebuilt.<sup>200</sup>

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<sup>196</sup> OSCE. “Kosovo Communities Profiles”. *OSCE Mission in Kosovo*. 2010. pp:200. Available at: <http://www.osce.org/kosovo/75450>

<sup>197</sup> OSCE. “Kosovo Communities Profiles”. *OSCE Mission in Kosovo*. 2010. pp:200. Available at: <http://www.osce.org/kosovo/75450>

<sup>198</sup> Government of Serbia. “Strategy for substantial existence and return to Kosovo and Metohija” (Strategija održivog opstanka i povratka na Kosovo i Metohiju). *Ministry for Kosovo and Metohija*. March 2009. pp:7. Available at: <http://www.infocentar.libergraf.rs/documents/Strategija%20odrzivog%20opstanka%20i%20povratka%20na%20KIM.pdf>

<sup>199</sup> International Crisis Group. “Return to Uncertainty: Kosovo’s Internally Displaced and the Return Process”. *International Crisis Group*. Balkans Reports No.139. 13 December 2002. Priština/Brussels. pp:22.

<sup>200</sup> Government of Serbia. “Strategy for substantial existence and return to Kosovo and Metohija” (Strategija održivog opstanka i povratka na Kosovo i Metohiju). *Ministry for Kosovo and Metohija*. March 2009. pp:8.

The minority communities, especially Serbs, are also experiencing one particularly complex problem that indirectly violates their property rights – forced sales. This issue is linked to security, where members of minority communities succumb to pressure to sell their home or land below the market price. The forced sales are happening under the established pattern: young Albanian men would visit a Serb house and politely offer to buy it. If their offer is refused, the house would be stoned repeatedly. They would then return with an even lower offer. If refused again, the intensity and frequency of harassment would be increasing until the house is sold. The number of forced sales is impossible to establish since neither the HPD, nor the KPA are classifying records based on inter-ethnic sales.<sup>201</sup>

The international administration until 2006 and the provisional authorities after this year did make efforts to resolve the issue of minorities' property rights. However, they were rather unsuccessful. In the early years, even if the HPD would order an eviction from illegally occupied home, the Kfor and UNMIK police were reluctant to enforce the decision. This trend continued when the KPA took over and the KPS became in charge of evictions. Even if they would evict an illegal occupier, another one would soon move in since the legal owner resides somewhere else.<sup>202</sup> In addition, another pressing issue is the extreme inefficiency of the KPA and local courts to deal with property rights claims requests. Out of 41,177 requests that were submitted by 2011, the decision has been reached in only 11,735 cases.<sup>203</sup>

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Available at:

<http://www.infocentar.libergraf.rs/documents/Strategija%20odrzivog%20opstanka%20i%20povratka%20na%20KIM.pdf>

<sup>201</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. pp:19. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>202</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:251. Available at: <http://www.osce.org/kosovo/75450>

<sup>203</sup> Kosovo Property Agency. "Protecting Private Property. Total Claimed Properties". 2011. Available at: <http://www.kpaonline.org/claimProp.asp>

## 5. CULTURAL RIGHTS

***“The Republic of Kosovo ensures the preservation and protection of its cultural and religious heritage”***

*- The Constitution of the Republic of Kosovo, Article 9*

***“States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”***

*- Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, Article 1, Paragraph 1*

***“The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage”.***

*- Framework Convention for the Protection of National Minorities, Article 5*

Cultural heritage, such as historic monuments, religious sites and language, have always been the defining elements of a particular ethnic or national group. In the case of minorities, they hold even greater significance. In a state, region or territory defined by the cultural characteristics of a majority group, minorities perceive their cultural features as an ultimate instrument of preservation of their distinctiveness and collective identity. The status of cultural heritage of one or more minority groups within a society is a good indicator for the quality of democracy, tolerance and human rights within that society.

This chapter will evaluate the rights of minority communities in regard to aspects of their cultural identity. In particular, the most pressing issues of preservation of historical and religious heritage, especially Serbian, and free use of language will be scrutinized. The component of minority cultural rights assessment will also be the role of the international



administration and the provisional authorities, their policies, strategies and actions in relation to Kosovo's minority cultures.

### *5.1. Destruction of Serbian religious heritage*

The conflict in Kosovo contained a dispute over sovereignty and territory between Serbs and Albanians in its core. Both of the sides used the presence of their respective cultural symbols, i.e. historic and religious sites, to support righteousness of their claims. This combination of cultural and political aspects turned the destruction of cultural heritage in Kosovo into a constituent element rather than a side effect of the conflict. Therefore, this led to the Kosovo war being “a new form of conflict that is produced not out of geopolitical or ideological disputes, but out of the politics of particularistic identities.”<sup>204</sup>

After the arrival of the international administration in Kosovo, minority cultural heritage was subjected to the systematic damaging and destruction. This was a particular case regarding Serbian religious heritage, which had a significant symbolic meaning for both Serbs and Albanians. Over 1,300 Serb Orthodox churches, monasteries and other religious sites in Kosovo are the crucial determinant of identity not only for Kosovo Serbs but also for all Serbs in general. For Albanians, these monuments represent symbols of the presence of the Serbian state, which they utterly refuse to be a part of.<sup>205</sup>

Since June 1999 over 150 Serbian cultural monuments, churches and other religious landmarks have been destroyed in Kosovo. What makes the destruction a deliberate and organized campaign targeted to eliminate one minority community's signs of presence is “the promotion of false historical data, undue claims to cultural heritage belonging to other peoples and the changing and renaming of geographical names and toponyms”.<sup>206</sup>

The major destructions of Serbian cultural and religious landmarks occurred in two periods; in the second half of 1999 and first half of 2000, and during the March 2004 riots.

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<sup>204</sup> Herscher, Andrew and Andras Riedlmayer. “Monument and Crime: The Destruction of Historic Architecture in Kosovo”. *Grey Room, Inc. and Massachusetts Institute of Technology*. Grey Room 01. Fall 2000. pp:109. Available at: [http://sitemaker.umich.edu/herscher/files/monument\\_and\\_crime.pdf](http://sitemaker.umich.edu/herscher/files/monument_and_crime.pdf)

<sup>205</sup> Jokić, Branko V. “The March Pogrom in Kosovo and Metohija”. *Ministry of Culture of the Republic of Serbia*. Belgrade 2004. pp:5-12

<sup>206</sup> Ibid. pp:19-20.

In the aftermath of the war, as Serbs began leaving Kosovo, many churches remained unprotected and became an object of retribution by the Albanian population. This was the case especially in urban areas. Desecration would happen by a pattern: churches would be first robbed, then vandalized and then burned or razed to the ground. It is estimated that over 100 churches and other religious landmarks were either heavily damaged or destroyed during the first year and a half of international presence in Kosovo.<sup>207</sup>

The current situation for Serb Orthodox religious sites is relatively good. Since Kfor and KPS increased security measures around churches and monasteries after the March 2004 riots, there have been no major destructions. However, Serb religious heritage is still regularly subjected to thefts, stoning and partial damaging, especially in areas where there is no Serb population.<sup>208</sup> Additionally, a bizarre trend of desecration of Serb graves never ceased.<sup>209</sup> One of the biggest Serbian cemeteries in Kosovo located in southern Mitrovica has no undamaged tombstones. All of them are either partially damaged or completely destroyed. The efforts of families to rebuild them are in vain, as they end up being destroyed again only a few days after the reconstruction. In some cases, vandals go even further by digging out coffins, leaving the skeletons and bodies to be devoured by wild animals.<sup>210</sup> On 18 February 2010, a Kosovo Serb elderly woman was buried in the Serbian Orthodox cemetery in Gnjilane, for the first time since 1999. The next morning the grave was desecrated, the coffin dug up and severely damaged.<sup>211</sup>

Other minority communities do not face significant destruction or damaging of their cultural and religious heritage. Since all of them are nominally Muslims, as is almost the whole Albanian population of Kosovo, their religious and cultural sites, consisting mainly

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<sup>207</sup> Jokić, Branko V. "The March Pogrom in Kosovo and Metohija". *Ministry of Culture of the Republic of Serbia*. Belgrade 2004. pp:50-65.

<sup>208</sup> European Commission. "Kosovo 2010 Progress Report". *European Commission*. 9 November 2010. Brussels. pp:16. Available at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ks\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ks_rapport_2010_en.pdf)

<sup>209</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:263-264. Available at: <http://www.osce.org/kosovo/75450>

<sup>210</sup> Kosovo.net. "Rat protiv mrtvih" (War against dead). Available at: [http://www.kosovo.net/wad\\_serb.html](http://www.kosovo.net/wad_serb.html)

<sup>211</sup> OSCE. "Communities Rights Assessment Report: Second Edition". *OSCE Mission in Kosovo*. December 2010. pp:6. Available at: <http://www.osce.org/kosovo/74597>

of mosques, were never the targets of attacks. Except for the Roma community, all others freely share religious facilities with the majority population.<sup>212</sup>

#### *5.1.1. The March 2004 riots destruction*

During only two days of the March 2004 riots, Serbian cultural and religious heritage experienced the most concentrated and most intensive destruction. Out of roughly 155 churches and monasteries that were partially or completely destroyed in the past 12 years, 35 of them faced a similar destiny over the course of 48 hours in March 2004. Apart from the goal to ethnically cleanse Kosovo of minorities, Serbs and Roma in the first place, 50,000-plus rioters delivered its destructive force upon religious and cultural objects of the Serbian community. It is clear that their aim was also to destroy any traces and symbols of historical and contemporary presence of Serbs in Kosovo. Therefore, they purposely targeted sites of the greatest historical, religious and artistic value.<sup>213</sup>

The most valuable Serb religious site destroyed in the March 2004 riots was the Church of the Virgin of Ljeviš in Prizren. The church was built in the early 14<sup>th</sup> century and has been listed on the UNESCO list of world heritage since 2004. The rioting mob on 17 March looted the church first, desecrated frescos, and then set it ablaze. The fire completely destroyed everything inside the church, including centuries-old religious artifacts and wall paintings. Besides this one, 16 others churches and monasteries listed as first-class cultural monuments by Serbia were also looted and burned to the ground.<sup>214</sup>

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<sup>212</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:91,160,298. Available at: <http://www.osce.org/kosovo/75450>

<sup>213</sup> Government of Serbia. "Strategy for substantial existence and return to Kosovo and Metohija" (Strategija održivog opstanka i povratka na Kosovo i Metohiju). *Ministry for Kosovo and Metohija*. March 2009. pp:8-9. Available at: <http://www.infocentar.libergraf.rs/documents/Strategija%20odrzivog%20opstanka%20i%20povratka%20na%20KIM.pdf>

<sup>214</sup> Jokić, Branko V. "The March Pogrom in Kosovo and Metohija". *Ministry of Culture of the Republic of Serbia*. Belgrade 2004. pp:43.

## 5.2. Responses of the international administration and PISG

Responses of the international administration to the destruction of Serbian cultural heritage have been idle and ineffective. In the initial period, during the first two years after the war, Kfor's policy was the deployment of troops around major religious and cultural sites. This strategy did help to prevent potential destruction, but at the same time hundreds of other churches, monasteries and monuments were left completely unprotected and therefore doomed to be destroyed or damaged. The unwillingness of Kfor to act was especially surprising in relation to those towns and villages that were completely emptied of Serbs and where probable destruction of cultural and religious heritage was certain to happen. After the looting and burning of a particular church or monastery would take place, Kfor forces would surround rubbles with barbed wire to prevent further destruction, if that was even possible anymore. Within two years upon the arrival of the international forces, Kosovo was dappled with piles of bricks and concrete, surrounded with barbed wire, where once centuries-old sacral monuments of the Christian Orthodox civilization used to stand.<sup>215</sup>

The failure to protect Serbian cultural heritage was complete during the March 2004 riots. Kfor soldiers or the KPS, which was also in charge of security at the time, were unable to protect 34 churches and monasteries from complete destruction. The failure was most visible in the German sector of responsibility, where all the religious sites under their protection were set alight. The only appropriate response came from Kfor's Italian soldiers who were able to defend monasteries of Dečani and Peć Patriarchy, another two monuments on the UNESCO world heritage list, in spite of constant attacks of massive Albanian rioting mobs.<sup>216</sup>

Only after the March 2004 riots did the international administration decide to actively engage in the protection and reconstruction of the Serb community cultural and

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<sup>215</sup> Jokić, Branko V. "The March Pogrom in Kosovo and Metohija". *Ministry of Culture of the Republic of Serbia*. Belgrade 2004.

<sup>216</sup> Human Rights Watch. "Failure to Protect: Anti-Minority Violence in Kosovo, March 2004". Volume 16, No.6(D). July 2004. pp:20-57. Available at: <http://www.forumnvo.org.rs/docs/analize/Anti-minority%20violence%20in%20Kosovo.pdf>

religious heritage. Their first move was to ensure security around the sites, which was achieved by the increasing of Kfor troops and a more proactive engagement of the KPS. After this, UNMIK obliged a few of the provisional authorities' institutions, such as the Ministry of Culture Youth and Sports, the Kosovo Institute for the Protection of Monuments and the Kosovo Council for Cultural Heritage, to make the reconstruction of Serbian religious heritage their top priorities. UNMIK also invited UNESCO, the European Commission and the Council of Europe to assist in assessing the damage that Serb churches and monasteries sustained in March 2004. Subsequently, the representatives of the provisional authorities, the Serbian Orthodox Church, and Belgrade-affiliated experts were included in the process, which resulted in the production of three technical assessment reports on the reconstruction of 34 Serbian churches and monasteries. The provisional authorities and UNMIK pledged around 3.7 USD million and 0.5 USD million, respectively, for the first phase of reconstruction, which started in 2005. In the same year, the Reconstruction Implementation Commission for Serbian Orthodox Religious Sites in Kosovo was formed with tasks to coordinate and supervise the reconstruction of the churches and monasteries.<sup>217</sup> Up until 2010, almost two-thirds of reconstruction works have been finished. Over 8 USD million was spent, funded mainly by the provisional authorities and the international administration.<sup>218</sup>

In accordance with the international administration's policy of the transfer of responsibilities to the provisional authorities, Kfor started to hand over the security of Serbian churches and monasteries to the KPS. In August 2010, the KPS became responsible for security of four monasteries, including the monastery Gračanica in central Kosovo. The move was not welcomed by the Serbian Orthodox Church, which claimed that this would worsen the security conditions for the clergy and monastery itself.<sup>219</sup> Few months earlier, in March, the KPS also took over the responsibility to protect the Gazimestan, a monument complex erected on the place where the epic battle between

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<sup>217</sup> Reconstruction Implementation Commission. "The Background". *Reconstruction Implementation Commission*. Priština. 2011. Available at: <http://www.rickosovo.org/RIC%20-english/Background.htm>

<sup>218</sup> UN. "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo". *Security Council*. 29 October 2010. pp:10. Available at: <http://www.unmikonline.org/UNMIKONLINE2009/misc/docs/sc-reports/S-2010-562.pdf>

<sup>219</sup> Ibid.

Serbian and Ottoman armies took place in 1389. This event was also followed by the security concerns of the Serb community representatives, which openly expressed their doubts concerning the KPS's sincerity and ability to protect one of the most important Serbian monuments. Kfor still remains responsible for the protection of four Serbian monasteries, two of which are on the UNESCO list of world heritage.<sup>220</sup>

Despite the fact that both the international administration and the provisional authorities improved the security situation and reconstructed major monuments of Serbian culture, the heritage of this minority community is still being attacked by more sophisticated means. The municipal authorities throughout Kosovo very often issue permits for construction on illegally occupied church land or special protective zones around churches and monasteries.<sup>221</sup> The exemplary case is the construction of a park in the center of Đakovica, where once the church of Holy Trinity stood. The church was razed in 1999, rubble cleared few years later, and in 2008 its foundations were buried with a one meter-thick layer of earth. On top of it, a new park funded by the municipality budget was built in the same year, leaving no traces of the church's existence.<sup>222</sup>

Another issue is that the international administration and the provisional authorities focused their attention exclusively on the reconstruction and preservation of 34 churches and monasteries destroyed in the March 2004 riots. Hundreds of others that were destroyed or partially damaged before and after these events remained unprotected and are facing slow disappearance under the influence of weather conditions and vandals.

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<sup>220</sup> Radio Television of Serbia. "KPS čuva Gračanicu" (KPS guards Gračanica). *RTS*. 23 August 2010. Belgrade. Available at:

<http://www.rts.rs/page/stories/sr/story/9/Srbija/755186/KPS+%C4%8Duva+Gra%C4%8Danicu>

<sup>221</sup> OSCE. "Communities Rights Assessment Report: Second Edition". *OSCE Mission in Kosovo*. December 2010. pp:5. Available at: <http://www.osce.org/kosovo/74597>

<sup>222</sup> Serbian Orthodox Church. "Video story about the usurpation of the Church's land in Đakovica and other information about this case". 17 July 2008. Available at: [http://www.spc.rs/sr/video\\_reportaza\\_o\\_uzurpaciji\\_crkvene\\_zemlje\\_u\\_djakovici\\_i\\_ostale\\_informacije\\_o\\_ovo\\_m\\_slucaju](http://www.spc.rs/sr/video_reportaza_o_uzurpaciji_crkvene_zemlje_u_djakovici_i_ostale_informacije_o_ovo_m_slucaju)

### 5.3. Use of minority languages

The official languages of Kosovo are Albanian and Serbian, while Turkish, Bosnian and Roma languages have the status of official languages at the municipal level.<sup>223</sup> In reality, the languages of minority communities are heavily underrepresented in public life for two major reasons: security concerns and institutional segregation.

Members of minority communities avoid speaking their native language in majority Albanian areas out of fear they could be physically or verbally harassed. This problem was particularly present during the early years of the international administration when speaking in some of the minority languages, especially Serbian, could even lead to being killed. In summer of 1999, few weeks after the deployment of first contingent of international mission, a Bulgarian-national UNMIK staff member was killed in broad daylight on streets of Priština. Since both Serbian and Bulgarian are South-Slavic languages and sound similar to non-native speakers, the killers, ethnic Albanians, thought that a Bulgarian, whom they heard speaking, was actually a Serb.<sup>224</sup> Over the years, the situation improved and Serbs are now free to speak their language in most of urban areas but occasionally confront verbal abuse by Albanians. Situation in rural areas is much different and Serbs and other minorities use Albanian language if they are able to speak it.<sup>225</sup>

While speaking a minority language does not pose a security risk anymore in most of today's Kosovo, the form of direct language segregation within Kosovo's provisional institutions is widespread and systematic. Serbian language, as the second official language, is heavily underrepresented in official communication. Many institutions do not translate their official documents into Serbian and if so, the quality of translation is very poor. The employees of public institutions often require to be addressed only in Albanian

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<sup>223</sup> "Constitution of the Republic of Kosovo", Article 5. Available at:

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

<sup>224</sup> Baldwin, Clive. "Minority Rights in Kosovo under International Rule". *Minority Rights Group International*. London. 2006. pp:14. Available at: <http://www.minorityrights.org/1072/reports/minority-rights-in-kosovo-under-international-rule.html>

<sup>225</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:260-262. Available at: <http://www.osce.org/kosovo/75450>

and respond only in Albanian. Official web pages of the provisional authorities in a very few cases have their complete content translated into Serbian, while for other minority languages almost never. Topographical road signs are in most of the cases bi-lingual, but Serbian name is often scratched over or peeled off.<sup>226</sup> The provisional authorities adopted the Law on languages in 2006, committing themselves to ensure equal representation and use of official languages. However, the minority communities are still not completely able to freely use their native languages in public or to communicate with public institutions and receive services from them in one of the non-Albanian languages without any obstacles.<sup>227</sup>

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<sup>226</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:260-262. Available at: <http://www.osce.org/kosovo/75450>

<sup>227</sup> OSCE. "Implementation of the Law on the Use of Languages by Kosovo Municipalities". *OSCE Mission in Kosovo*, Monitoring Department. June 2008. Available at: <http://www.osce.org/kosovo/32762>



## 6. ECONOMIC AND SOCIAL RIGHTS

***“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”***

*- Universal Declaration of Human Rights, Article 23 (1)*

***“Communities and their members shall have right to:***

***...Enjoy equal opportunity with respect to employment in public bodies at all levels and with respect to access to public services at all levels; ...***

***...Receive and provide public health and social services, on a nondiscriminatory basis, in accordance with applicable standards; ...”***

*- Constitutional Framework, Chapter 4, Paragraph 4.4*

The right to work and the right to the free access to social services, such as health and education, are often excluded from the list of basic human rights. However, as the meaning and interpretations of human rights are constantly widening, the rights to have employment and social security have become a vital part of what is referred to as *second generation rights*.<sup>228</sup> Social and economic rights are particularly important for the assessment of minority human rights because they are a good indicator of the levels of inclusion or exclusion of a minority group within the society.

This chapter will examine the quality of these rights in the case of Kosovo. It will look into the basic structure, and indicators of Kosovo's economic and social services systems. Areas of living standard, employment rate, accessibility to basic social services, and social coverage of minority communities will be examined in order to show to what extent these parameters are directly tied to the level of respect for basic human rights. Finally, it will describe the issue of quality and accessibility of the education system for children from minority communities.

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<sup>228</sup> Sen, Amartya. “Elements of a Theory of Human Rights”. *Blackwell Publishing Inc.* Philosophy & Public Affairs 32, No.4. 2004. pp:316. Available at: <http://www.mit.edu/~shaslang/mprg/asenETHR.pdf>

### 6.1. Overview of the Kosovo economy

Kosovo is one of the poorest regions in Europe with the GDP per capita equaling 3,240 USD.<sup>229</sup> The unemployment rate is hard to evaluate because of the lack of census data and a huge shadow economy, but it is estimated to be between 40 and 60 percent, the highest in Europe.<sup>230</sup> Kosovo's population is the poorest in Europe, with 45 percent living in poverty and 18 percent in extreme poverty.<sup>231</sup> In the period 1999-2009 Kosovo's annual GDP growth was 4 percent.<sup>232</sup>

Kosovo's current economic status is a result of decades-long stagnation and poor performance. During the time of former Yugoslavia, Kosovo was receiving significant development subsidies from a federal fund financed by all republics as being the country's poorest region. The economic stagnation of Yugoslavia in the 1980s, followed by the break up of the country, international sanctions and wars in the 1990s, additionally deteriorated Kosovo's economy. The Kosovo War and NATO bombardment practically killed the economy by destroying the few remaining vital companies. Under the international administration, the international community has been extensively helping Kosovo's recovery.<sup>233</sup>

Today, Kosovo is still heavily dependant on the financial aid from abroad. Remittances from the diasporas, mainly in Switzerland, Germany and the Nordic countries, account for 13-15 percent of GDP, while donor-financed activities for another seven percent. With international assistance, Kosovo privatized over 90 percent in value of public

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<sup>229</sup> World Bank. "World Bank Data by Country". 2009. Available at:

<http://data.worldbank.org/country/kosovo>

<sup>230</sup> CIA. "The World Factbook: Economy – Kosovo". 20 April 2011. Available at:

<https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>

<sup>231</sup> World Bank. "Kosovo Poverty Assessment. Volume II: Estimating Trends from Non-comparable Data". Report No.39737-XK. *Poverty Reduction and Economic Management Unit, Europe and Central Asia Region*. 3 October 2007. pp:7. Available at:

<http://siteresources.worldbank.org/INTKOSOVO/Country%20Home/21541688/KosovoPAvol2.pdf>

<sup>232</sup> World Bank. "Kosovo – Country Brief 2010". October 2010. Available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/KOSOVOEXTN/0,,contentMDK:20629286~menuPK:297777~pagePK:141137~piPK:141127~theSitePK:297770,00.html>

<sup>233</sup> World Bank. "Kosovo". Available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/KOSOVOEXTN/0,,menuPK:297775~pagePK:141159~piPK:141110~theSitePK:297770,00.html>

companies. Kosovo is rich in minerals – lignite, zinc, nickel, aluminum – which were the backbone of its industry, but output drastically plunged due to ageing equipment and the lack of investment. Bad communication infrastructure, limited and unreliable electricity supply, widespread corruption, weak institutions and unresolved political status are the major obstacles of Kosovo's economic development.<sup>234</sup>

The dire economic situation directly influences the social one. People of Kosovo are falling behind the health and education standards of their European neighbors. Human Development Index, the measurement of progress and quality of life, is the lowest in the region. The under-five child mortality rate is 35-40 per 1,000 live births, being the highest in Europe. The life expectancy is 69 years, among the lowest in Europe. The social protection system reaches only 25 percent of the poor. Only 10 percent of the children with disabilities are enrolled in school.<sup>235</sup> Overall, the extreme poverty and bad social conditions are among few rare things that connect all ethnic communities in Kosovo.

## *6.2. Economic status of minority communities*

The underdeveloped economy, combined with security issues, segregation and limited freedom of movement, makes the socio-economic situation of minority communities even worse than Kosovo's average. The basic economic parameters for non-Albanians, such as the employment rate and average salary, are lower than in the case of Kosovo Albanians. In exercising their right to work, members of minority communities are subjected to both indirect discrimination, i.e. the inability to travel to workplaces, as well as direct discrimination, based on their ethnicity, language and/or religion. The situation is additionally worsened in minority enclaves, which in some cases do not possess basic infrastructure and resources for any kind of economic activity.<sup>236</sup>

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<sup>234</sup> CIA. "The World Factbook: Economy – Kosovo". 20 April 2011. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>

<sup>235</sup> UNDP. "Kosovo Human Development Report 2010". *UNDP in Kosovo*. Available at: <http://www.ks.undp.org/repository/docs/HDR-2010-English.pdf>

<sup>236</sup> Amnesty International, "Prisoners in our Own Homes: Amnesty International's concerns for the human rights in Kosovo/Kosova". pp:36. April 2003. Available at:

The Roma community is experiencing the worst economic situation in Kosovo, which is close to that in least developed countries. The unemployment rate of Roma male youth aged 15 – 24 is 75 percent.<sup>237</sup> Very few Roma are employed in public service, despite the quotas for minorities prescribed by law. Because of some specific cultural characteristics, such as early marriages and high dropout rates from school, Roma are generally a less competitive work force, with fewer qualifications and skills. This trend is particularly present in the case of Roma women, as only few are actively engaged in formal labor market. Common types of employment for Kosovo Roma are collecting scrap metal or low paid cleaning activities.<sup>238</sup>

The economic status of the Gorani is relatively good. Traditionally known as good bakers, their main source of income are family-run businesses such as confectionaries or fast food shops. A significant portion of income is also generated from agricultural activities, livestock or beekeeping predominantly. Since many Goranis moved out of Kosovo prior to and especially after the war, remittances from abroad comprise another significant share of incomes.<sup>239</sup>

The economic situation within the Serb community varies according to a region. In the enclaves south of the Ibar River economic parameters are extremely bleak. The unemployment rate is nearly 90 percent, while the average monthly salary is 100 Euros and average monthly pension just below 40 Euros. Therefore, an overwhelming majority of Kosovo Serbs is dependent on subsidies from Serbia, the so called *the Kosovo supplement*, or on salaries they receive directly from Serbia's budget as public sector employees. Over the course of the past few years, more and more Serbs are willing to work in the public

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<http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>237</sup> Amnesty International, "Prisoners in our Own Homes: Amnesty International's concerns for the human rights in Kosovo/Kosova", pp:10. April 2003. pp:19. Available at:

<http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>238</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:190. Available at:

<http://www.osce.org/kosovo/75450>

<sup>239</sup> Ibid. pp:150.

sector provided by the provisional institutions, especially in the KPS and municipal administration.<sup>240</sup>

In the Mitrovica region, situation is somehow different. The average monthly salary is around 250 Euros. However, the private sector generates only 15 percent of the income of the local community. The biggest employer is the state of Serbia, whose institutions are fully present in the region and runs all the public services. Small portions of those employed are working for the international administration, usually as translators and drivers, or other international organizations.<sup>241</sup>

In spite of the high unemployment, Kosovo Serbs are in a better position compared to other communities. Combined incomes from Belgrade's and the provisional institutions' subsidies and international donations in the form of pensions, social welfare put their living standard above the average of other minority communities.<sup>242</sup>

### 6.3. Access to health services

Generally, the Kosovo healthcare system is in a very bad condition. Despite the substantial investments by the international community after the war, the sector remains poorly developed. It is characterized by low quality services, corrupt medical staff, lack of essential pharmaceuticals, poor hygiene standards, and poor working conditions and salaries.<sup>243</sup> The government expenditures on healthcare are only three percent of GDP, far less than the regional seven percent average.<sup>244</sup> In addition, there are two health care systems in Kosovo that operate separately; one funded by the international administration and provisional authorities and another by Serbia present only in areas with Serbian

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<sup>240</sup> Kostovicova, Denisa. "European Zones of Human Security: A Proposal for the European Union". *Center for the Study of Global Governance*. February 2007. pp:7. Available at: <http://www.lse.ac.uk/archived/global/Publications/HumanSecurityZonesPaper.pdf>

<sup>241</sup> UNMIK. "A Post-Industrial Future? Economy and Society in Mitrovica and Zvečan". *European Stability Initiative*. Available at: [http://www.esiweb.org/pdf/esi\\_document\\_id\\_61.pdf](http://www.esiweb.org/pdf/esi_document_id_61.pdf)

<sup>242</sup> OSCE. "Kosovo Communities Profiles". *OSCE Mission in Kosovo*. 2010. pp:231. Available at: <http://www.osce.org/kosovo/75450>

<sup>243</sup> Terdevci, Fatmire. "Report on Kosovo's Healthcare System". *BIRN*. Priština. November 2009. Available at: [http://www.kosovo.birn.eu.com/attachment/000000792.pdf?g\\_download=1](http://www.kosovo.birn.eu.com/attachment/000000792.pdf?g_download=1)

<sup>244</sup> UNDP. "Kosovo Human Development Report 2010". *UNDP in Kosovo*. 2010. pp:70. Available at: <http://www.ks.undp.org/repository/docs/HDR-2010-English.pdf>

majority. Except for a few cases, Serbs do not use services of medical facilities in Albanian areas and vice versa.<sup>245</sup>

Obtaining even basic medical services in such a low-quality system for minority communities is often practically impossible. As in the case of employment, the most affected community are the Roma. Two major reasons why Roma are unable to access Kosovo's healthcare system is the lack of healthcare insurance and ethnic segregation. Since only a small portion of Roma have formal employment, their ability to acquire health insurance is very limited. Another problem is that Albanian doctors occasionally refuse to treat Roma or do so only if they are forced by Kfor soldiers or other international staff. Since Kosovo's health system is rigged by corruption, patients give money to doctors in the pay-out-of-pocket manner as a condition to receive medical attention. Consequently, Roma often do not go to hospitals knowing that without money they will not be taken care of.<sup>246</sup> Even if Roma do have access to health centers in Albanian majority areas, they often opt for receiving treatment in Serb-dominated areas because of fears of being ill-treated. In Gnjilane, for example, despite the fact that there is a hospital only 150 meters away from their neighborhood, Roma go to a smaller and less equipped medical center in the Serb enclave, which is six kilometers away.<sup>247</sup>

On the other hand, the health condition of the Roma community members is additionally worsened by the poor living conditions. They primarily reside in enclaves and ghettos, in improvised housing such as tents or abandoned and ruined houses, where sanitary conditions are extremely bad. This situation especially affects children. In the already mentioned Roma camp in Mitrovica, where the massive poisoning by lead is

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<sup>245</sup> Bllom, J.D., et al. "Ethnic segregation is Kosovo's post-war health care system". *European Journal of Public Health*, Vol.17, No.5. European Public Health Association. November 2006. pp:431. Available at: <http://eurpub.oxfordjournals.org/content/17/5/430.short>

<sup>246</sup> Amnesty International, "Prisoners in our Own Homes: Amnesty International's concerns for the human rights in Kosovo/Kosova". pp:10. April 2003. pp:37. Available at: <http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>247</sup> Bllom, J.D., et al. "Ethnic segregation is Kosovo's post-war health care system". *European Public Health Association. European Journal of Public Health*, Vol.17, No.5.. November 2006. pp:433. Available at: <http://eurpub.oxfordjournals.org/content/17/5/430.short>

recorded, a Roma child “will be the least healthy, the least nourished and have the least access to health care of all Kosovo children.”<sup>248</sup>

Serbs are in the best situation compared to other minorities, when it comes to healthcare system accessibility. Their medical insurance is paid by Serbia and they receive medical treatments in Serbia-funded medical facilities. In the Mitrovica region, there are 1,460 employees in healthcare, which is more than enough to service the population of around 50,000. There is also a central hospital in North Mitrovica, with local medical centers in Zvečan, Zubin Potok and Leposavić.<sup>249</sup> However, Serbs who live south of the Ibar River are in a notably worse situation. The larger enclaves, like Gračanica and Štrpce, have hospital-like medical centers, whereas smaller ones rarely do. Serbs from these areas are forced to travel to Gračanica, Štrpce or the Mitrovica region. In the Gnjilane enclave, Serbs rather go to the hospital in Bujanovac, in southern Serbia, which is 30 kilometers away than to the local hospital in their town. In cases of emergency, when life is directly endangered, Serbs or other minorities ask for treatment in the provisional authorities-run hospitals or medical centers only if Kfor escorts them.<sup>250</sup>

#### 6.4. Access to education

Literacy and the level of education are directly tied with one’s social status and quality of life as well as with development prospects of a society as the whole. This rule particularly applies to Kosovo. About 67 percent of the population with higher education is employed, in contrast to only 14 percent of those without formal education.<sup>251</sup>

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<sup>248</sup> UNDP. “Kosovo Human Development Report 2010”. *UNDP in Kosovo*. 2010. pp:74. Available at: <http://www.ks.undp.org/repository/docs/HDR-2010-English.pdf>

<sup>249</sup> UNMIK. “A Post-Industrial Future? Economy and Society in Mitrovica and Zvečan”. *European Stability Initiative*. Available at: [http://www.esiweb.org/pdf/esi\\_document\\_id\\_61.pdf](http://www.esiweb.org/pdf/esi_document_id_61.pdf)

<sup>249</sup> UNMIK. “A Post-Industrial Future? Economy and Society in Mitrovica and Zvečan”. *European Stability Initiative*. pp:7. Available at: [http://www.esiweb.org/pdf/esi\\_document\\_id\\_61.pdf](http://www.esiweb.org/pdf/esi_document_id_61.pdf)

<sup>250</sup> Amnesty International, “Prisoners in our Own Homes: Amnesty International’s concerns for the human rights in Kosovo/Kosova”. pp:10. April 2003. pp:38. Available at: <http://www.amnesty.org/en/library/asset/EUR70/010/2003/en/4172c5e4-d702-11dd-b0cc-1f0860013475/eur700102003en.pdf>

<sup>251</sup> UNDP. “Kosovo Human Development Report 2010”. *UNDP in Kosovo*. 2010. pp:53. Available at: <http://www.ks.undp.org/repository/docs/HDR-2010-English.pdf>

The situation in the education system is the same as in the respect to health care. In majority Albanian areas students are studying according to curriculum created by the provisional authorities, while in the Serb areas the curriculum is that of Serbia. While the enrollment of Kosovo Albanian and Serb children in primary schools is almost full, it is only 77 percent in children aged 7-14 among other communities (Roma, Askhali, Egyptians, Bosniaks and Gorani). The percentage is lower for girls in these communities and stands at 69 percent.<sup>252</sup>

As in all other social aspects, Roma are experiencing the greatest exclusion from the education system of all minorities. It is hard to keep accurate records of the number of Roma kids enrolled in primary education, because of the constant dropouts and stay-outs. Generally, the rate of Roma attending primary education is unacceptably low and is estimated to be below 50 percent. For example, in the municipality of Gnjilane there are over 1,160 Roma families where none of the children from these families go to school. A big issue for Roma children that blocks their access to the education system is the language barrier. Many of them do not speak either of the two official languages, Albanian or Serbian, which is one of the reasons for the high dropout rate. Although laws stipulate that members of all ethnic communities should be able to gain education in their mother tongue, no substantial capacities to enforce this measure have been developed yet.<sup>253</sup>

In general, Kosovo Serb children do not face difficulties in accessing the education system in Kosovo provided by Serbia. Serbian-curriculum schools are in a relatively good condition; school transportation is provided and funded by Serbian government and with the exception of Roma pupils the dropout rate is very low.<sup>254</sup> However, the major problem for Serb students is the access to secondary education. The only Serb-curriculum university in Kosovo is located in the northern Mitrovica, so the students south of the Ibar River are forced to travel or to find accommodation in the town which financially burdens their

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<sup>252</sup> UNDP. "Kosovo Human Development Report 2010". *UNDP in Kosovo*. 2010. pp:59. Available at: <http://www.ks.undp.org/repository/docs/HDR-2010-English.pdf>

<sup>253</sup> UNICEF. "Education of Minority Children in Kosovo". *UNICEF Kosovo*. January 2004. Available at: [http://www.unicef.org/kosovo/kosovo\\_media\\_pub\\_educ.007.04.pdf](http://www.unicef.org/kosovo/kosovo_media_pub_educ.007.04.pdf)

<sup>254</sup> OSCE. "Kosovo non-majority communities within the primary and secondary educational system". *OSCE Mission in Kosovo, Department of Human Rights and Communities*. April 2009. pp:4. Available at: <http://www.osce.org/kosovo/36978>



parents. Because of this, many families simply decide to move from Kosovo to Serbia, looking for better education, higher security and better employment prospects for their kids.<sup>255</sup>

The Gorani community is experiencing problems in accessing education in Serbian language. In 2009, most of Gorani teachers decided to remain loyal to the Serbian curriculum. As a response, local administration controlled by Albanians denied teachers the right to conduct teaching in local school facilities unless they accept Albanian-language curriculum by the provisional authorities. The issue was resolved by the mediation of international administration and most of Gorani children now again attend schools with the language of instruction being Serbian. Still, some children are forced to travel over 20 kilometers a day because there is not enough school facilities or teachers in the place of their residence. Other minorities, such as Turks and Bosniaks, do not experience any major obstacles to access the education system. Turks are well integrated into the majority Albanian society and their children attend Albanian-curriculum schools. In some of them, they are able to gain primary education in the Turkish language. Bosniaks also mainly choose to send their children in Albanian-language schools. Their major concern is the lack of textbooks in the Bosniak language.<sup>256</sup>

In sum, almost all children in Kosovo do have a chance to acquire education, at least on the primary level. However, the education system faithfully reflects the deeply divided society. In contemporary Kosovo not a single school, faculty or university provides education in both Serbian and Albanian languages. These two languages are official in Kosovo and, nominally, they should be equally represented in all public institutions, including schools. The result of this will be that young generations will not be able to communicate or understand each other, which will only strengthened divisions and mistrust between ethnic communities.<sup>257</sup>

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<sup>255</sup> UNICEF. "Education of Minority Children in Kosovo". *UNICEF Kosovo*. Janury 2004. pp:10. Available at: [http://www.unicef.org/kosovo/kosovo\\_media\\_pub\\_educ.007.04.pdf](http://www.unicef.org/kosovo/kosovo_media_pub_educ.007.04.pdf)

<sup>256</sup> OSCE. "Kosovo non-majority communities within the primary and secondary educational system". *OSCE Mission in Kosovo, Department of Human Rights and Communities*. April 2009. pp:5. Available at: <http://www.osce.org/kosovo/36978>

<sup>257</sup> OSCE. "Communities Rights Assessment Report: Second Edition". *OSCE Mission in Kosovo*. December 2010. pp:9. Available at: <http://www.osce.org/kosovo/74597>

## CONCLUSION

This thesis is set out to examine key developments in the area of minority human rights in Kosovo in the period following the military intervention of NATO to present day. In regard to this, the foremost questions the thesis targeted to investigate are: What has been the overall security situation for minority communities in Kosovo; to which extent do they enjoy unlimited freedom of movement on the whole territory of Kosovo; what is the current situation of internally displaced persons and refugees belonging to minority communities; what are the major trends in the process of return and to which extent it has been successful; what are the major issues related to property rights of minorities, as a distinctive problem that aroused in post-war Kosovo, and are these rights respected sufficiently; what are the crucial distinguishing constituents of minority cultural rights in Kosovo and how are they reflected by the situation on the ground; and what is the general socio-economic position of minority communities within the Kosovo society.

Simultaneously, the thesis aimed to find answers to another set of questions concerning the international presence on the ground and subsequently developed local structures of Kosovo's limited self-government: What is the scope of influence of the international administration and the provisional authorities on minority human rights in Kosovo and, particularly, to the areas chosen to be investigated above; what are the policies, instruments and responses of the international administration and the provisional authorities in addressing the issues of minority human rights; and how successful were they in promoting, protecting and implementing human rights of minority communities in Kosovo.

The summarized findings of the analysis show that human rights of minorities in Kosovo are far from being respected even up to the least satisfying and acceptable level. The security situation for the minorities has been dire throughout the whole period of international presence in Kosovo. Particularly dreadful were the first three years when over 1,000 people were murdered only because they belonged to one of the non-Albanian communities. Apart from killings, minorities were subjected to intensive campaign of abductions, beatings, and other forms of physical and verbal harassments. The yet-to-start

investigation into the case of organ harvesting of abducted and arbitrary imprisoned Serbs during the second half of 1999 and 2000, should reveal what were the extreme forms of human rights violations that Kosovo's minorities were enduring during the period. Over the course of years the security situation was steadily improving, with another backdrop during the March 2004 riots, and reached the current level that could be described as stable but fragile. The increased level of security could be partially prescribed to the fact that the majority Albanian community and minority communities are physically separated and virtually do not interact due to the trend of enclavisation and ghettoisation. The group existence of Serbs and Roma in present-day Kosovo assumed the form of mono-ethnic enclaves, ghettos and "pockets", with the freedom of movement confined within them.

Due to the brutal and intensive campaign of violence in the early years of international administration, Kosovo saw a major outflow of minorities. More than half of the Kosovo pre-war minority population, around 300,000, fled to Serbia, neighboring countries or elsewhere. To date, only eight percent or 21,000 returned. One of the greatest obstacles for return, besides security and harsh economic conditions, is the massive and systematic usurpation and illegal seizure of minorities' property by the Albanian population.

The respect for cultural rights is below the acceptable standards. Members of the minority communities are still far from being free to speak their language, profess their religion or display their ethnic symbols. In addition, the religious and cultural heritage of the Serbian community, churches and monasteries foremost, was subjected to systematic destruction and annihilation. Some of these centuries-old monuments have high artistic, religious and historic value and are the part of the humanity's heritage.

Lacking security and with limited freedom of movement, minority communities are in severe socio-economic situation within already impoverished Kosovo. The unemployment rate for minorities tops 90 percent, while Roma face almost full unemployment. The Roma and Serb refugee camps in Kosovo are the examples of ultimate human misery where people are exposed to extreme poverty, social exclusion and even industrial poisoning. Many members of minority communities, Roma especially, are not able to obtain medical services, social insurance and primary education for their children.

The response of the international administration and the provisional authorities in relation to all these human rights issues of minority communities has been rather bleak and ineffective. The main reason for it is a huge discrepancy between what has been proclaimed on the paper and what has been achieved on the ground. The international community did not lack policies, strategies, and plans for the improvement of overall situation of minority communities. The failure was their implementation on the ground. Additionally, the development of the provisional authorities and insertion of more international presence, for example through Eulex, created a complicated governing structure with overlapping competences and unclear duties and responsibilities. UNMIK and Kfor were not able to provide members of minority communities with the necessary minimum level of security. They were also unable to protect the property and belongings of those who fled Kosovo. Lootings, burnings, destruction and unlawful seizure of houses and land became widespread and uncontrolled, while UNMIK and Kfor were just idle bystanders. The same happened to religious and cultural heritage of non-Albanian communities, especially Serbian, which was targeted because of its important symbolic meaning.

Besides its role to rule Kosovo, the international administration was gradually developing local structure of government. The provisional authorities saw the increase in competences and responsibilities over time, including those related to minority communities. Unfortunately, their failure was even more abysmal. Mainly composed of Kosovo Albanians, the provisional authorities incorporated many of those who were responsible for crimes against minorities during the war and its aftermath. Combined with open intolerance of Albanians toward other ethnicities, these institutions turned out to be segregationist instruments in hands of the majority population. Furthermore, Albanian extremist easily used the provisional institutions and public-owned media to facilitate spread of hatred and violence toward Serbs and Roma, as it was the case in the eve and during the March 2004 riots.

The major success of both the international community and the provisional authorities is the reconstruction of Serbian churches and monasteries destroyed during the March 2004 riots. Another one is the Humanitarian Bus Transportation scheme that improves mobility of minorities between isolated enclaves. The increased security situation

is partially a result of increased efficiency of Kfor and the KPS and can be defined as one of the achievements.

Nevertheless, these minor improvements are not sufficient to reverse the effects of ethnic cleansing in the aftermath of the war, enclavisation of minority-populated areas, deeply rooted intolerance in Albanian community toward Serbs and Roma, and steady outflow and decrease of minority population in contrast to virtually halted return process. Contemporary Kosovo is an exclusively Albanian society with very small input from minority communities. Serbs mainly boycott the institutions of self-declared independent Kosovo, trying to find protection in a few remaining offshoots of Serbian government still operating in Kosovo. Other minority communities face no other choice but to be assimilated; they are forced to abandon their language, customs and identity.

The major issue of Kosovo's future regarding minority communities is how the results created by massive violations of human rights will be reversed. This primarily refers to return of refugees and de-enclavisation of minority areas. The goal of the international community to create a multiethnic society will end up as an utter failure if all those who were forced out of Kosovo never come back and if those who stayed continue to live in reservation-like, hermetically closed communities. If this is to be avoided, the question is how to integrate minorities into overwhelmingly Albanian dominated society and is that possible without having them to lose their unique ethnic, religious and linguistic characteristics. The constant reduction of international presence in Kosovo will eventually lead to a situation where at one point the provisional authorities, either as institutions of a fully recognized sovereign state or in some other form, will take full responsibility for all aspects of the social sphere, including those of minorities'. However, before that happens it is necessary to make these institutions functional and efficient, enabling them to address all the issues pertaining to minorities that have not been addressed accordingly for the past 12 years.

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# **APPENDICES**

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## Appendix 1.

### Kosovo



## Appendix 2.

### *Kosovo within the former Yugoslavia*

#### Former Yugoslavia



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Source: [http://www.lib.utexas.edu/maps/europe/fm\\_yugoslavia\\_pol96.jpg](http://www.lib.utexas.edu/maps/europe/fm_yugoslavia_pol96.jpg)

### Appendix 3.

#### *Municipalities of Kosovo*

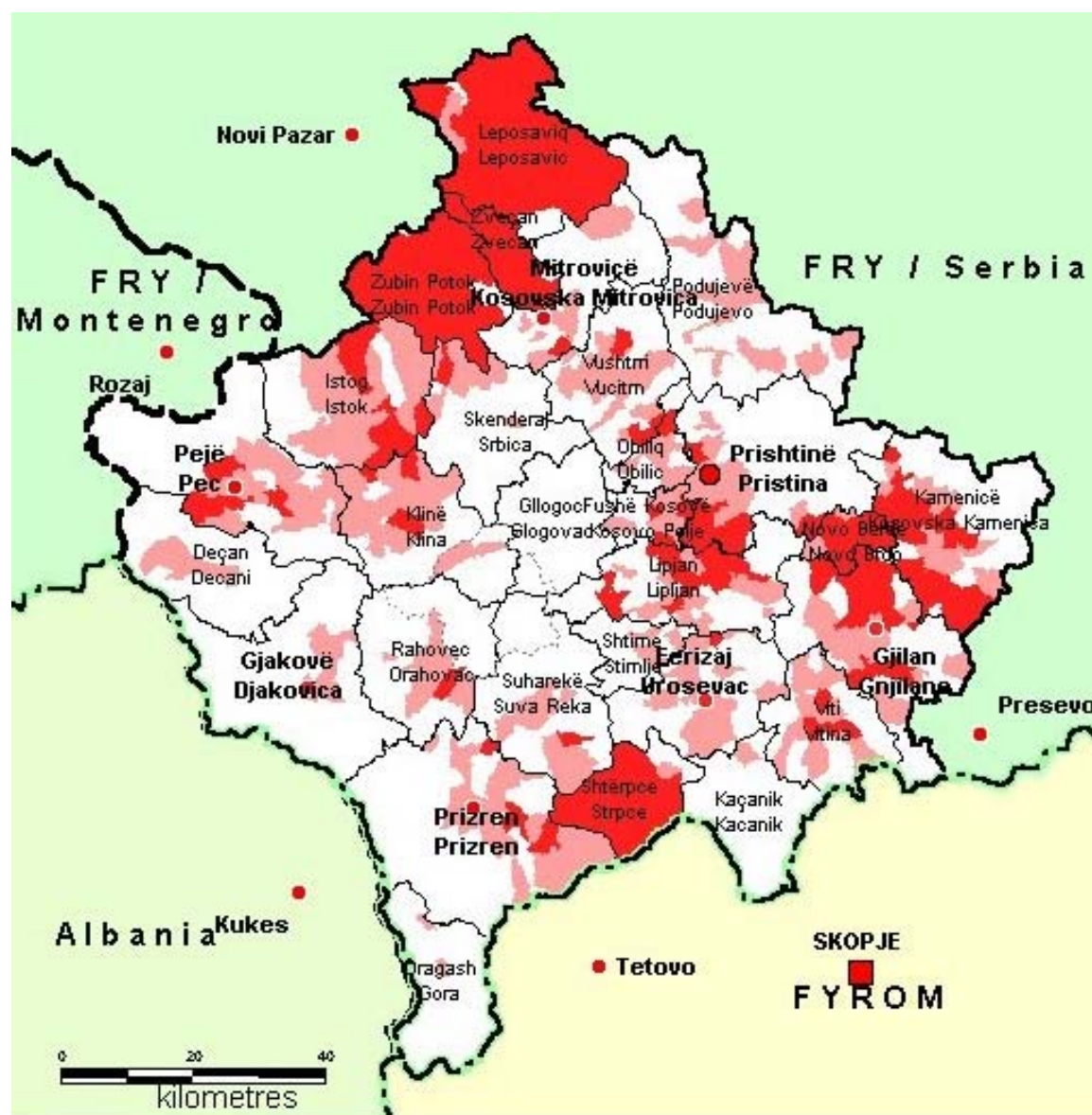


Source: <http://eurpub.oxfordjournals.org/content/17/5/430/F1.large.jpg>



## Appendix 4.

### *Geographical distribution of Serbs in Kosovo in 1991*



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

NOTE:

The majority of ethnic Albanians boycotted the 1991 census.

The table on the left reflects official estimates made by the Yugoslav Institute of Statistics.



Source: <http://www.kosovo.net/home2a.html>

## Appendix 5.

### *Geographical distribution of Roma in Kosovo in 1991*



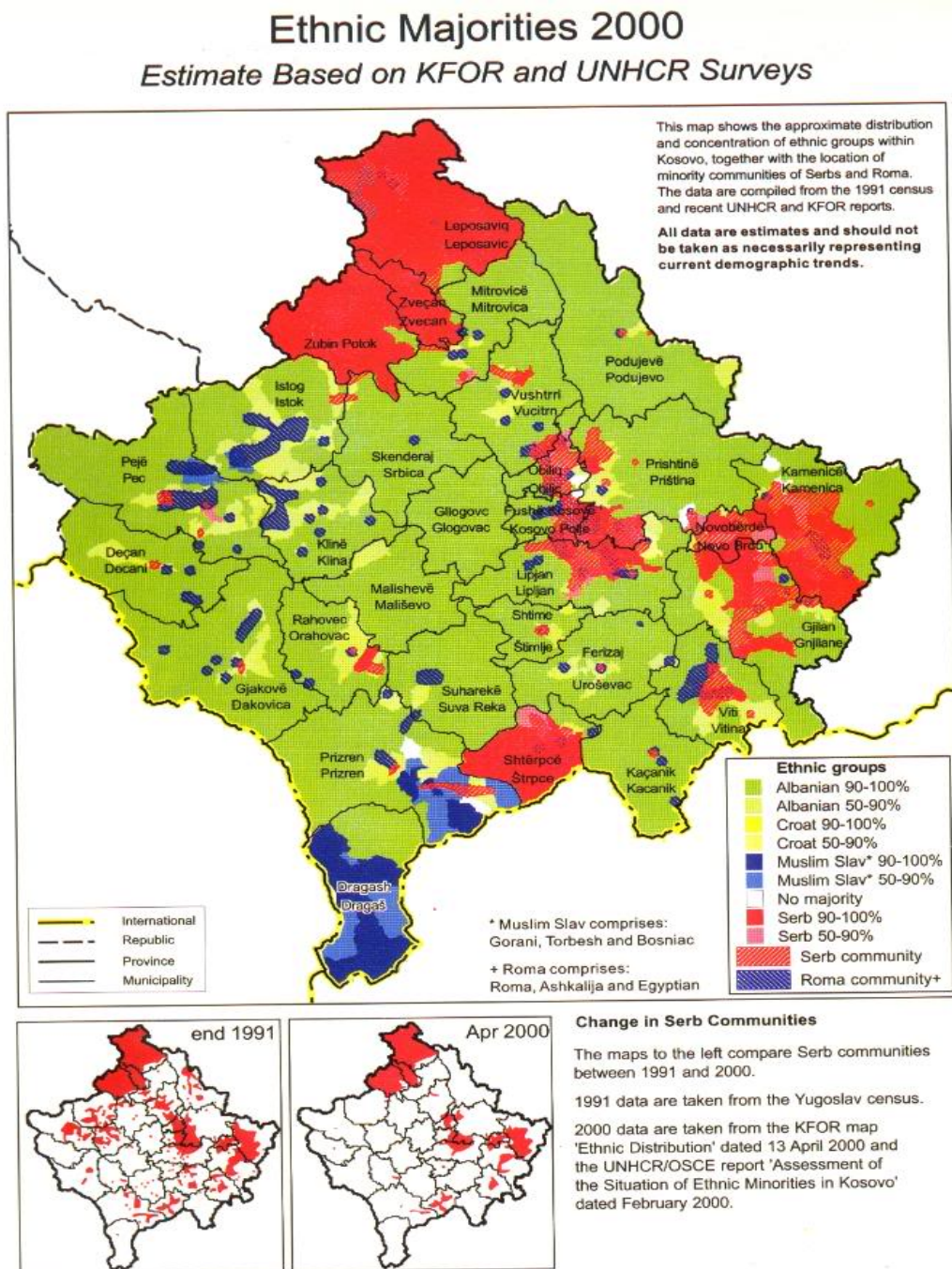
Humanitarian Community Information Centre  
 Pristina, Kosovo - 10 February 2000  
 Sources: NIMA, Yugoslav Institute of Statistics, UNHCR

Source: <http://www.kosovo.net/home2a.html>



## Appendix 6.

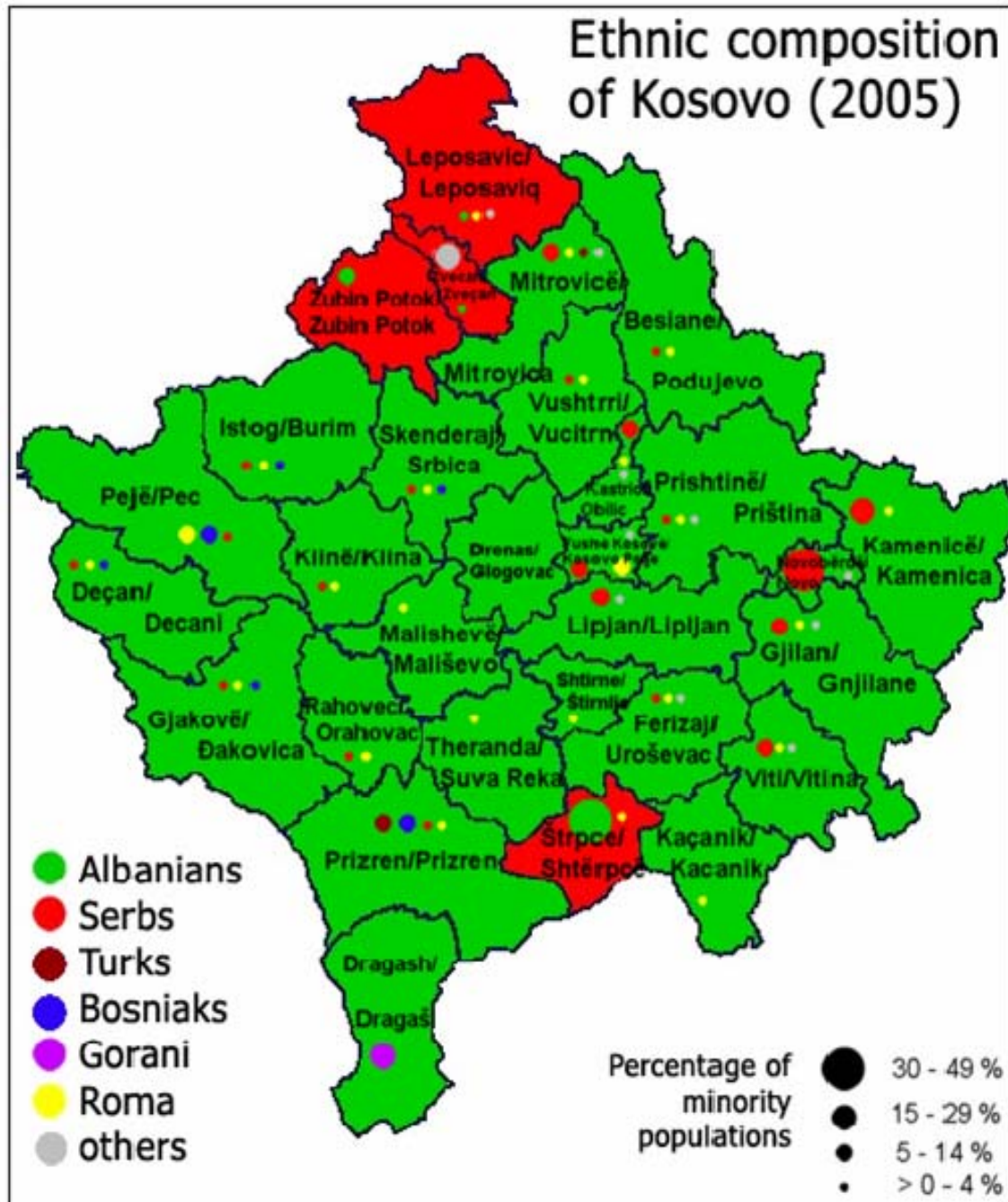
### *Ethnic composition of Kosovo in 2000*



Source: <http://www.crucified-kosovo.eu/Kosovo-Yugoslavia-Balkan-maps.php>

## Appendix 7.

### *Ethnic composition of Kosovo in 2005*

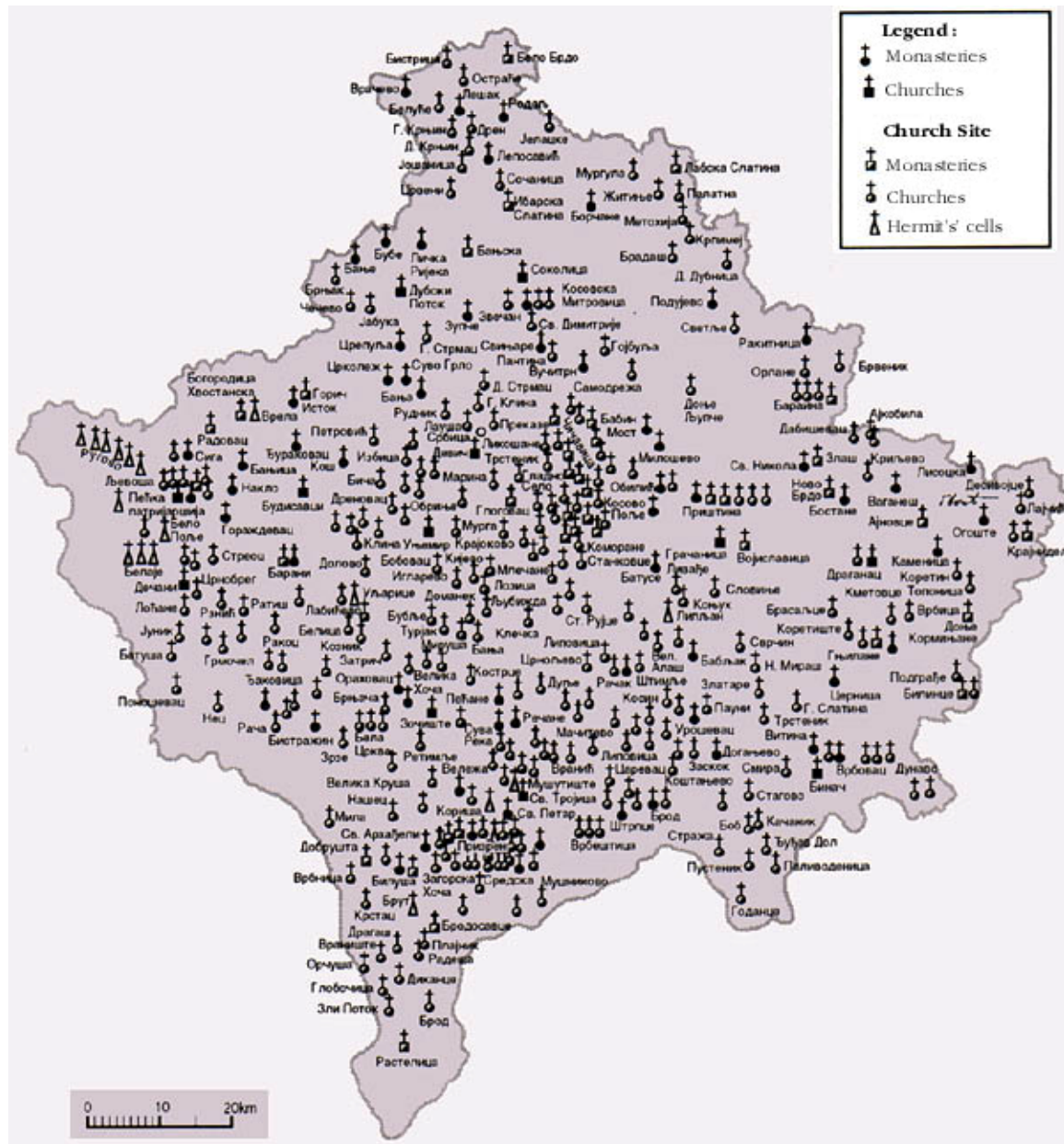


Source: <http://www.crucified-kosovo.eu/Kosovo-Yugoslavia-Balkan-maps.php>



## Appendix 8.

### *Serbian Orthodox monasteries and churches in Kosovo*



Source: <http://www.kosovoblog.com/wp-content/uploads/2010/10/Monasteries-in-Kosovo.jpg>



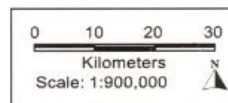
## Appendix 9.

### *Kfor's brigades and areas of responsibility*

## UNMIK Regions & KFOR Multi-National Brigade Boundaries



| Region                | Unit       | Battalion      | Location                      |
|-----------------------|------------|----------------|-------------------------------|
| Prishtinë / Priština  | MNB Centre | United Kingdom | Former VJ Barracks, Prishtinë |
| Gjilani / Gnjilane    | MNB East   | United States  | Camp Bondsteel, Sojeve        |
| Prizren               | MNB South  | Germany        | Factory Progress, Prizren     |
| Pejë / Pec            | MNB West   | Italy          | Grand Hotel, Pejë             |
| Mitrovicë / Mitrovica | MNB North  | France         | Former VJ barracks, Mitrovicë |



Source: <http://www.crucified-kosovo.eu/Kosovo-Yugoslavia-Balkan-maps.php>